



TUCSON AIRPORT AUTHORITY  
DBE PROGRAM 2024-2026  
49 CFR PART 21

APPROVED BY:   
Danette M. Bewley, A.A.E., President/CEO

**TITLE VI, CIVIL RIGHTS ACT OF 1964  
 NONDISCRIMINATION POLICY  
 STATEMENT**

Policy No.	2023-12
Effective Date	9/6/2023
Authorized By	President/CEO
Supersedes Policy No.	New Policy

Tucson Airport Authority (TAA) assures that no person shall on the grounds of race, color, national origin, sex, sexual orientation, gender identity, creed, age, or disability (hereafter, the “protected bases”), as provided by Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987 (PL 100.259), and the Section 520 of the Airport and Airway Improvement Act of 1982, and related authorities (hereafter, “Title VI and related requirements”), be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity.


TAA further assures every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs are federally funded or not. Any time communities may be impacted by programs or activities, every effort will be made to involve them and the general public in the decision-making process.

TAA requires nondiscrimination assurances, as proscribed by FAA, from each tenant, contractor, and concessionaire providing an activity, service, or facility at the airport. Assurances must be included in any related lease, contract, or franchise agreement between TAA and each tenant, contractor, and concessionaire, as well as in any similar agreements with their own sub-tenants and sub-contractors.

TAA’s Title VI Coordinator (Bert Resimont, 520-573-4892, bresimont@flytucson.com) is the point of contact for all Title VI matters and related responsibilities, including those required by 49 CFR Part 21.

Adopted by TAA Board of Directors: September 6, 2023

Authorized by:

  
 \_\_\_\_\_  
 Danette Bewley  
 President/CEO

9/6/23  
 \_\_\_\_\_  
 Date

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE TUCSON AIRPORT AUTHORITY, INC., APPROVING TAA'S FAA PART 21 NONDISCRIMINATION PROGRAM AND POLICY STATEMENT.**

**WHEREAS** the U.S. Department of Transportation (USDOT) requires entities receiving grants from the Federal Aviation Administration (FAA) under 49 CFR Part 21 to ensure that no person shall on the grounds of race, color, national origin, sex, sexual orientation, gender identity, creed, age, or disability (hereafter, the "protected bases"), as provided by Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987 (PL 100.259), and the Section 520 of the Airport and Airway Improvement Act of 1982, and related authorities (hereafter, "Title VI and related requirements"), be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity; and

**WHEREAS** TAA desires to apply for and receive such grants from the FAA for its various construction projects; and

**WHEREAS** USDOT regulations require TAA to create a Nondiscrimination Program and adopt and circulate a policy statement expressing its commitment to the Program, stating its objectives and outlining responsibilities for its implementation; and

**WHEREAS** the Board of Directors accepts the staff recommendations as outlined in the attached Policy Statement and the Board Memorandum.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE TUCSON AIRPORT AUTHORITY, INC., AS FOLLOWS:**

The President/CEO or her designee[s]) is hereby authorized to adopt the Nondiscrimination Program, to execute the *Title VI, Civil Rights Act of 1964 Nondiscrimination Policy Statement* (attached hereto as Exhibit A and incorporated by reference herein), to submit this Program to the Federal Aviation Administration (FAA), and to take any further actions which are necessary to comply with applicable federal regulations.


**PASSED AND ADOPTED** by the Board of Directors of the Tucson Airport Authority, Inc., this sixth day of September, 2023.

  
Keri Silvyn (Sep 8, 2023 08:39 PDT)  
Keri Silvyn, Chair of the Board

ATTEST:

  
Phil Swaim (Sep 7, 2023 16:57 PDT)  
Phil Swaim, Secretary

APPROVED AS TO FORM:

  
Chris Schmaltz (Sep 8, 2023 12:46 PDT)  
Christopher Schmaltz, Vice President  
and General Counsel

**Equal Employment Opportunity**

Policy No.	2021-68
Date	09/17/2021
Authorized By	D. Bewley
Supersedes Policy No.	2021-09

**Equal Employment Opportunity Policy**

Tucson Airport Authority (TAA) is an Equal Opportunity Employer that does not discriminate on the basis of actual or perceived race, color, creed, religion, national origin, ancestry, citizenship status, age, sex, or gender (including pregnancy, childbirth and pregnancy-related conditions), gender identity and expression (including transgender status), sexual orientation, marital status, military service and veteran status, physical or mental disability, genetic information, or any other characteristic protected by applicable federal, state or local laws and ordinances. TAA’s management team is dedicated to this policy with respect to recruitment, hiring, placement, promotion, transfer, training, compensation, benefits, team member activities, access to facilities and programs and general treatment during employment.

**Disabilities and Reasonable Accommodations**

TAA will endeavor to make a reasonable accommodation of an otherwise qualified applicant or team member related to an individual’s: physical or mental disability; sincerely held religious beliefs and practices; and/or any other reason required by applicable law, unless doing so would impose an undue hardship upon TAA’s business operations.

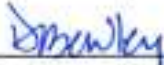
Any applicant or team member who needs an accommodation in order to perform the essential functions of the job should contact the Director of People Operations to request such an accommodation. The individual should specify what accommodation is needed to perform the job and submit supporting documentation explaining the basis for the requested accommodation, to the extent permitted and in accordance with applicable law. TAA then will review and analyze the request, including engaging in an interactive process with the employee or applicant, to identify if such an accommodation can be made. TAA will evaluate requested accommodations, and as appropriate, identify other possible accommodations, if any. The individual will be notified of TAA’s decision regarding the request within a reasonable period. TAA treats all medical information submitted as part of the accommodation process in a confidential manner.

**Anti-Retaliation and Reporting Procedure**

Any team members with questions or concerns about equal employment opportunities in the workplace are encouraged to bring these issues to the attention of the Director of People Operations and/or the team member's Vice President. TAA will not allow any form of retaliation against individuals who raise issues of equal employment opportunity. If team members feel they have been subjected to any such retaliation, they should contact the Director of People Operations and/or the team member's Vice President. To ensure our workplace is free of artificial barriers, violation of this policy including any improper retaliatory conduct will lead to discipline, up to and including discharge. All team members must cooperate with all investigations conducted pursuant to this policy.

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Authorized by:

  
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Danette Bewley  
President/CEO

9/22/21  
\_\_\_\_\_  
Date

**Zero Tolerance Anti-Harassment**

Policy No.	2022-07
Date	10/07/2022
Authorized By	D. Bewley
Supersedes Policy No.	2021-13

**Anti-Harassment Policy**

The Tucson Airport Authority (TAA) is committed to maintaining a work environment in which all individuals are treated with respect, fairness, and dignity. Every individual has the right to work in an atmosphere that promotes equal opportunities, free from harassment and retaliation. This policy applies to all TAA employees, non-TAA employees, the public, and to persons working under contract with TAA.

**Definitions of Harassment:**

- A. Sexual harassment constitutes unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. Under the Equal Employment Opportunity Commission guidelines, sexual harassment occurs when a person is subject to that unwelcome conduct when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.
  
- B. Harassment on the basis of any other protected characteristic is also strictly prohibited. Under this policy, harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of race, color, national origin, sex (including pregnancy, gender identity and/or expression, and sexual orientation), religion, disability, age (age 40 or older), or genetic information, and that: (i) has the purpose or effect of creating an intimidating, hostile, or offensive work environment, (ii) has the purpose or effect of unreasonably interfering with an individual’s work performance; or (iii) otherwise adversely affects an individual’s employment opportunities.

Harassing conduct includes, but is not limited to, the following: (i) epithets, slurs, negative stereotyping, or threatening, intimidating, or hostile acts, that relate to race, color, national origin, sex (including pregnancy, gender identity and/or expression, and sexual orientation), religion, disability, age (age 40 or older), or genetic information; and (ii) written or graphic material that denigrates or shows hostility or aversion toward an individual or group because of race, color, religion, national origin, age, sex, sexual orientation, gender identity and/or

expression, or disability and that is placed on walls, bulletin boards, or elsewhere in the workplace or circulated in the workplace. While certain classes have legal protection against harassment, TAA has zero tolerance of harassment as defined above for any TAA employee, contractor, or tenant.

Personal Response to Unlawful Harassment:

A person who has experienced harassment has no legal responsibility to confront or complain to the offender. A harassed individual, at his/her option, may go directly to his/her immediate supervisor, the head of the department, a Vice President, or a member of the People Operations department to get assistance in dealing with the problem without saying anything to the offending party. However, if you are on the receiving end of minor harassment, you might be able to build positive communications and help both you and the offender by telling the offender that you are upset by his/her action. This may help the offender by educating that person about unlawful harassment. The person who is offensive might be willing to change his/her behavior if given this feedback in a calm but firm manner.

If for any reason you are not comfortable with talking to the offender about his/her harassment actions, you should immediately seek help directly from your immediate supervisor, the head of the department, a Vice President, or our People Operations department. If a supervisor is informed of a harassment situation, they must immediately inform People Operations, and their department head and/or Vice President.

Supervisors must be especially aware. Team members who are willing to speak to each other when they are offended, may be reluctant to confront a supervisor about feeling harassed. Supervisors should actively monitor their own conduct and that of their subordinates to make sure it meets professional standards.

**All reports of harassment shall remain confidential to the extent reasonably permitted by the investigation. No retaliation or other adverse employment action will result from reports of harassment made in good faith pursuant to this policy.**

Discipline:

TAA will not tolerate any form of harassment. The type of discipline to which an employee may be subject for harassing another employee will depend on the severity of the findings. Discipline may range from verbal counseling up to and including termination.

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Authorized by:

*Danette Bewley*

Danette Bewley  
President/CEO

*10/7/22*

Date



## **ADMINISTRATION**

Tucson Airport Authority has reviewed and adopted this Title VI Program for Tucson International Airport and Ryan Airfield. This program will be updated every 3 years and will not be re-adopted following minor changes. Significant revisions to our policies or federal guidelines may warrant re-adoption by the Tucson Airport Authority and resubmittal to the FAA. See **Appendix 1** for Title VI, 49 CFR, Part 21 regulation.

## **TITLE VI COORDINATOR & STAFF RESPONSIBILITIES**

In addition to a Title VI Coordinator, Subject Matter Expert (SME) positions have been assigned to coordinate Title VI information, data, and notices related to the program. See **Appendix 2** for details of the Title VI Coordinator role, responsibilities, and also a list of the Title VI SME staff assignments and responsibilities. A listing of active federal grant applications and awards are available from the Program and Regulatory Compliance staff.

## **REPORTS AND FORMS**

28 CFR § 42.406(d); 49 CFR Part 21 Appendix C(b)(3)

The Director of Programs & Regulatory Compliance completes the “Title VI Pre-Award Sponsor Checklist” as part of the grant application package for projects that meet one or more of the following criteria:

1. Environmental assessment or impact statement;
2. Major runway extension;
3. Relocation of airport, runway, person, or structure; or
4. Impact access or preservation of burial, ceremonial, or other sacred or historic structure or lands of any indigenous or ethnic population.

The “Title VI Pre-Award Sponsor Checklist” is available through the FAA at their website, [https://www.faa.gov/about/office\\_org/headquarters\\_offices/acr/com\\_civ\\_support/envir\\_justice/media/FAA\\_Order\\_1400.11\\_Pre-Award\\_Checklist.pdf](https://www.faa.gov/about/office_org/headquarters_offices/acr/com_civ_support/envir_justice/media/FAA_Order_1400.11_Pre-Award_Checklist.pdf) or by calling your FAA Regional Civil Rights Staff. For a copy of the checklist see **Appendix 3**.

## **TRANSPORTATION**

49 CFR Part 21 Appendix C (a)(1)(ix)

In the Community Statistics section of this program, TAA identified the following disadvantaged areas of nearby communities: Sunnyside neighborhood, according to the FAA's Aviation Environmental Design Tool (AEDT), which identified minority and low-income populations as part of the TUS 2018 Environmental Impact Statement (EIS) addressing the implementation of the Airfield Safety Enhancement Project (ASE) Project.

TAA has coordinated with Sun Tran, the regions public travel system, to provide access to the airport from these locations to enhance transportation and employment opportunities. See **Appendix 4** - Public Transportation / Accessibility for details.

## **GRANT AND PROCUREMENT ASSURANCES**

49 CFR Part 21.7 (a)(1), 49 CFR Part 21 Appendix C (b)

Prior to or upon application for any grant, including grants for the purchase of land or an airport or noise implementation project involving construction, TAA will execute the complete standard DOT assurances for Title VI and related requirements applicable to the grant in the form prescribed by FAA. See **Appendix 5** or follow this link:

[https://www.faa.gov/airports/aip/grant\\_assurances/#current-assurances](https://www.faa.gov/airports/aip/grant_assurances/#current-assurances)

### **Clauses / Covenants**

- All contracts, leases, deeds, licenses, permits or other similar instruments, must contain the contractual requirements and clauses. See **Appendix 6** or follow this link:

[https://www.faa.gov/airports/aip/procurement/federal\\_contract\\_provisions/](https://www.faa.gov/airports/aip/procurement/federal_contract_provisions/)

- TAA requires Civil Rights clauses to be included in solicitations and contracts for all subcontractors, subleases, and other agreements. See table 1 on page 7 of **Appendix 6** (Applicability of provision). TAA includes Civil Rights non-discrimination clauses in contracts and periodically checks subrecipient and subcontractor agreements for inclusion of those clauses. A subcontract template must be used in all subcontracts related to the airport program. Subcontracts are audited by the Procurement Department to verify they include the template language, for not less than 10 percent of contractors each year.

## **COMPLAINTS**

49 CFR Part 21 Appendix C (b)(3); 28 CFR Part 42.406(d)

Complaints received by airport personnel are forwarded to the Title VI Coordinator. The coordinator maintains a record of the complaint, conducts a preliminary review and attempt at resolution, and forwards a copy of the complaint and a description of the resolution efforts to the FAA within 15 days of receipt. Complaints can be received in the following manner:

TAA Website – Telephone - Anti-Discrimination Poster ( See **Appendix 7** for complaint procedures)

## **MINORITY BUSINESS NOTIFICATION AND OUTREACH**

49 CFR Part 21 Appendix C(a)(1)(x)

**49 CFR Part 21 Appendix C(a)(1)(x):** “The sponsor shall assure that the minority business community in the area is advised of the opportunities offered by airport concessions, and that bids are solicited from such qualified minority firms, and awards made without regard to race, color, or national origin.”

**NOTE:** This regulation is in addition to the Disadvantaged Business Enterprise Program in 49 CFR Part 26. All FAA funding recipients, regardless of funding levels, must meet the notification and award requirements of 49 CFR Part 21 Appendix C(a)(1)(x).

Bids for airport concessions are solicited from area minority business through the following methods: Local minority and general newspapers, trade journals, and a professional services directory, etc. Some of the bid notification sources include: The Daily Territorial, American Association of Airport Executives Current RFPs (Request for Proposals) and Business Opportunities listings, FAA Matchmaker System, Arizona Airports Association and the Tucson Airport Authority listings of Bids and RFPs.

The concession award process is not based on race, creed, color, national origin, age, disability, sex, sexual orientation, or gender identity. Information on the award process and documentation for specific bid decisions is kept with the Procurement Department.

In the event of a complaint or compliance review, recipients may be asked for information pertaining to the solicitation and award process. A complaint investigator may ask the recipient to provide a non-discriminatory basis for the award and for documentation of the award process. We recommend that the recipient use minority publications and non-English publications, where appropriate, to advertise concession opportunities. Follow this link for the regulation and see **Appendix 8** for outreach efforts:

[eCFR :: Appendix C to Part 21, Title 49 -- Application of Part 21 to Certain Federal Financial Assistance of the Department of Transportation](#)

## **NOTICE REQUIREMENTS**

### 49 CFR Part 21 Appendix C(b)(2)(ii)

**49 CFR Part 21 Appendix C(b)(2)(i)** requires recipients to have a copy of Part 21 available to the public during normal working hours and to provide information to the public regarding its Part 21 compliance. TAA provides a copy of 49 CFR Part 21 for public review upon request in the administration office lobby during normal working hours.

**49 CFR Part 21 Appendix C(b)(2)(ii) and 28 CFR 42.405(c)** require recipients to conspicuously display a notice furnished by the FAA in main public area(s) stating discrimination based on race, color, or national origin is prohibited. TAA will conspicuously display the FAA provided nondiscrimination posters in areas of the airport with pedestrian activity and the Title VI Coordinator will ensure these posters are visible and maintained (See **Appendix 9**). The posters use the unmodified template format, available at:

[https://www.faa.gov/sites/faa.gov/files/about/office\\_org/headquarters\\_offices/acr/Title\\_VI\\_Poster.pdf](https://www.faa.gov/sites/faa.gov/files/about/office_org/headquarters_offices/acr/Title_VI_Poster.pdf)

TAA will ensure that consultants and/or contractors conspicuously display the FAA provided nondiscrimination posters at airport construction project locations.

TAA's Director of Marketing, Communications and External Relations (or its designee) ensures that required notice of public hearings and opportunities to comment on proposed airport actions reach all segments of the impacted community. Such notices are announced over general and minority broadcast media, including newspapers, where appropriate. TAA's Director of Marketing, Communications and External Relations contacts leaders in affected communities directly and solicits their participation. The office maintains records of all such notices and the efforts made to reach the affected community.

To ensure that the community is effectively informed of and able to participate in public hearings, TAA's Director of Marketing, Communications and External Relations advertises public notices in appropriate languages when a significant number or proportion of the affected community has limited English proficiency. Such notices will include direction for obtaining an interpreter free of charge for the public hearing. See [28 CFR § 42.405\(d\)](#).

## **TRAINING**

People Operations at Tucson Airport Authority is committed to supporting and enforcing ADA and Title VI through training. New employee orientation incorporates Title VI nondiscrimination training, which includes forwarding complaints to the Title VI Coordinator, Title VI notices and contract clauses, and accessing language interpretation and translation services. Training also contains cultural and community relations sensitivity training. Refresher information is provided annually.

## **MONITORING**

The Title VI Coordinator will provide oversight of the entire Title VI Program. This includes ensuring training is conducted, language translation services are available, and appropriate Title VI signage is posted. This also includes updating community statistics and corresponding with the FAA as necessary.

## **COMMUNITY STATISTICS**

Several regulations relating to Title VI of the Civil Rights Act of 1964 require federal grant recipients to know their community demographics. For the communities eligible to be served by, or actually or likely to be affected, served, benefited, or burdened by TAA’s airport program or activities, see **Appendix 10**.

## **LIMITED ENGLISH PROFICIENCY (LEP)**

**Executive Order (EO) 13166 (issued August 11, 2000)** – Improving Access to Services for Persons with LEP. <https://www.justice.gov/crt/executive-order-13166>

**70 Federal Register (FR) 74087 (issued December 14, 2005) (“DOT Guidance”)** – “Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons.”

<https://www.federalregister.gov/documents/2005/12/14/05-23972/policy-guidance-concerning-recipients-responsibilities-to-limited-english-proficient-lep-persons>

Airport recipients are required to take reasonable steps to eliminate barriers to meaningful communication with LEP individuals and to provide necessary services equivalent to those provided to people who are fully English proficient. For TAA efforts regarding LEP see **Appendix 10**.

**APPENDICES**

Appendix 1	Regulations
Appendix 2	List of Title VI Staff Assignments & Responsibilities
Appendix 3	Title VI Pre-Award Sponsor Checklist
Appendix 4	Public Transportation / Accessibility
Appendix 5	Grant Assurances
Appendix 6	Mandatory Provisions
Appendix 7	Discrimination Complaint Procedures/Form
Appendix 8	Minority Business Community Outreach
Appendix 9	Unlawful Discrimination Posters
Appendix 10	Community Statistics & Limited English Proficiency (LEP)
Appendix 11	Self-Assessments

## **APPENDIX 1**

### **REGULATIONS**

- 1-A: 14 CFR Part 382
- 1-B: 14 CFR Part 382.99
- 1-C: 28 CFR Part 35.105
- 1-D: 28CFR Part 35.106
- 1-E: 28 CFR Part 35.107
- 1-F: 28 CFR Part 35.130
- 1-G: 28 CFR Part 35.160
- 1-H: 28 CFR Part 36
- 1-I: 49 CFR Part 21
- 1-J: 49 CFR Part 27.7
- 1-K: 49 CFR Part 27.11
- 1-L: 49 CFR Part 27.13
- 1-M: 49 CFR Part 27.15
- 1-N: 49 CFR Part 27.71
- 1-O: 49 CFR Part 27.72
- 1-P: 49 CFR Part 27.121
- 1-Q: 49 CFR Part 28
- 1-R: 49 CFR Part 37.5
- 1-S: 49 CFR Part 37.7
- 1-T: 49 CFR Part 37.23
- 1-U: 49 CFR Part 37.33
- 1-V: 49 CFR Part 37.129
- 1-W: 49 CFR Part 37.131
- 1-X: 49 CFR Part 37.163
- 1-Y: 49 CFR Part 37.165
- 1-Z: 49 CFR Part 37.167
- 1-1: 49 CFR part 37.173



**14 CFR PART 382**

<https://www.ecfr.gov/current/title-14/chapter-II/subchapter-D/part-382>

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**PART 382 - NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL**



**Authority:** 49 U.S.C. 41705.



**Source:** Doc. No. DOT-OST-2004-19482, 73 FR 27665, May 13, 2008, unless otherwise noted.



**Subpart A - General Provisions**



**§ 382.1 What is the purpose of this part?**



The purpose of this part is to carry out the Air Carrier Access Act of 1986, as amended. This rule prohibits both U.S. and foreign carriers from discriminating against passengers on the basis of disability; requires carriers to make aircraft, other facilities, and services accessible; and requires carriers to take steps to accommodate passengers with a disability.



**14 CFR PART 382.99**

<https://www.ecfr.gov/current/title-14/chapter-II/subchapter-D/part-382/subpart-G/section-382.99>

Title 14 / Chapter II / Subchapter D / Part 382 / Subpart G / § 382.99

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**§ 382.99 What agreements must carriers have with the airports they serve?**

- (a) As a carrier, you must negotiate in good faith with the airport operator of each U.S. airport described in § 382.95(b) to ensure the provision of lifts for boarding and deplaning where level-entry loading bridges are not available.
- (b) You must have a written, signed agreement with the airport operator allocating responsibility for meeting the boarding and deplaning assistance requirements of this subpart between or among the parties. For foreign carriers, with respect to all covered aircraft, this requirement becomes effective May 13, 2010.
- (c) For foreign carriers, the agreement with a U.S. airport must provide that all actions necessary to ensure accessible boarding and deplaning for passengers with a disability are completed as soon as practicable, but no later than May 13, 2011.
- (d) Under the agreement, you may, as a carrier, require that passengers wishing to receive boarding and deplaning assistance requiring the use of a lift for a flight check in for the flight one hour before the standard check-in time for the flight. If the passenger checks in after this time, you must nonetheless provide the boarding and deplaning assistance by lift if you can do so by making a reasonable effort, without delaying the flight.
- (e) The agreement must ensure that all lifts and other accessibility equipment are maintained in proper working condition.
- (f) All carriers and airport operators involved are jointly and severally responsible for the timely and complete implementation of the agreement.
- (g) You must make a copy of this agreement available, on request, to representatives of the Department of Transportation.

*[Doc. No. DOT-OST-2004-19482, 73 FR 27665, May 13, 2008, as amended at 74 FR 11471, Mar. 18, 2009]*

**28 CFR PART 35.105**

<https://www.ecfr.gov/current/title-28/chapter-I/part-35/subpart-A/section-35.105>

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**§ 35.105 Self-evaluation.**

- (a) A public entity shall, within one year of the effective date of this part, evaluate its current services, 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 services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.
- (b) A public entity 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.
- (c) A public entity that employs 50 or more persons shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:
  - (1) A list of the interested persons consulted;
  - (2) A description of areas examined and any problems identified; and
  - (3) A description of any modifications made.
- (d) If a public entity has already complied with the self-evaluation requirement of a regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this section shall apply only to those policies and practices that were not included in the previous self-evaluation.

*(Approved by the Office of Management and Budget under control number 1190-0006)*

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

**28 CFR PART 35.106**

<https://www.ecfr.gov/current/title-28/chapter-I/part-35/subpart-A/section-35.106>

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**§ 35.106 Notice.**



A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

**28 CFR PART 35.107**

<https://www.ecfr.gov/current/title-28/chapter-I/part-35/subpart-A/section-35.107>

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**§ 35.107 Designation of responsible employee and adoption of grievance procedures.**



- (a) **Designation of responsible employee.** A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.
- (b) **Complaint procedure.** A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.

**28 CFR PART 35.130**

<https://www.ecfr.gov/current/title-28/chapter-I/part-35/subpart-B/section-35.130>

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**§ 35.130 General prohibitions against discrimination.**

- (a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.
- (b)
  - (1) A public entity, 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 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 the 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 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 aids, 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 aids, 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 public entity's program;
    - (vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;
    - (vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

- (vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.
- (2) A public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.
- (3) A public entity 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 public entity's program with respect to individuals with disabilities; or
  - (iii) That perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State.

- (4) A public entity may not, in determining the site or location of a facility, make selections -
    - (i) That have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or
    - (ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.
  - (5) A public entity, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.
  - (6) A public entity 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 a public entity 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. The programs or activities of entities that are licensed or certified by a public entity are not, themselves, covered by this part.
  - (7)
    - (i) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.
    - (ii) A public entity is not required to provide a reasonable modification to an individual who meets the definition of "disability" solely under the "regarded as" prong of the definition of "disability" at [§ 35.108\(a\)\(1\)\(iii\)](#).
  - (8) A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.
- (c) Nothing in this part prohibits a public entity from providing benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities beyond those required by this part.
  - (d) A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.
  - (e)
    - (1) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under the ADA or this part which such individual chooses not to accept.
    - (2) Nothing in the Act or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.
  - (f) A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.
  - (g) A public entity shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.
  - (h) A public entity may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the public entity must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

- (i) Nothing in this part shall provide the basis for a claim that an individual without a disability was subject to discrimination because of a lack of disability, including a claim that an individual with a disability was granted a reasonable modification that was denied to an individual without a disability.

*[Order No. 1512-91, 56 FR 35716, July 26, 1991, as amended by AG Order No. 3180-2010, 75 FR 56178, Sept. 15, 2010; AG Order 3702-2016, 81 FR 53225, Aug. 11, 2016]*



**28 CFR PART 35.160**

<https://www.ecfr.gov/current/title-28/chapter-I/part-35/subpart-E/section-35.160>

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**§ 35.160 General.**

(a)

- (1) A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.
- (2) For purposes of this section, "companion" means a family member, friend, or associate of an individual seeking access to a service, program, or activity of a public entity, who, along with such individual, is an appropriate person with whom the public entity should communicate.

(b)

- (1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.
- (2) The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

(c)

- (1) A public entity shall not require an individual with a disability to bring another individual to interpret for him or her.
- (2) A public entity shall not rely on an adult accompanying an individual with a disability to interpret or facilitate communication except -

(i) In an emergency involving an imminent threat to the safety or welfare of an individual or the public

(ii) Where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.

(3) A public entity shall not rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.

(d) **Video remote interpreting (VRI) services.** A public entity that chooses to provide qualified interpreters via VRI services shall ensure that it provides -

- (1) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;
- (2) A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position;

- (3) A clear, audible transmission of voices; and
- (4) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.

*[Order No. 1512-91, 56 FR 35716, July 26, 1991, as amended by AG Order No. 3180-2010, 75 FR 56183, Sept. 15, 2010]*

**28 CFR PART 36**

<https://www.ecfr.gov/current/title-28/chapter-I/part-36?toc=1>

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## **Part 21: NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION---EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

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AUTHORITY: 42 U.S.C. 2000D-2000D-6

SOURCE: 35 FR 10080, JUNE 18, 1970, UNLESS OTHERWISE NOTED

## §21.1 Purpose

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the Act) to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Transportation.

## §21.3 Application of this part

(a) This part applies to any program for which Federal financial assistance is authorized under a law administered by the Department, including the types of Federal financial assistance listed in appendix A to this part. It also applies to money paid, property transferred, or other Federal financial assistance extended after the effective date of this part pursuant to an application approved before that effective date. This part does not apply to:

- (1) Any Federal financial assistance by way of insurance or guaranty contracts;
- (2) Money paid, property transferred, or other assistance extended before the effective date of this part, except where such assistance was subject to the title VI regulations of any agency whose responsibilities are now exercised by this Department;
- (3) Any assistance to any individual who is the ultimate beneficiary; or
- (4) Any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in [§ 21.5\(c\)](#).

The fact that a type of Federal financial assistance is not listed in appendix A to this part shall not mean, if title VI of the Act is otherwise applicable, that a program is not covered. Other types of Federal financial assistance under statutes now in force or hereinafter enacted may be added to appendix A to this part.

(b) In any program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving that assistance, the nondiscrimination requirement of this part shall extend to any facility located wholly or in part in that space.

[[35 FR 10080](#), June 18, 1970, as amended at [68 FR 51389](#), Aug. 26, 2003]

## §21.5 Discrimination prohibited

**(a) General.** No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.

**(b)** Specific discriminatory actions prohibited:

(1) A recipient to which this part applies may not, directly or through contractual or other arrangements, on the grounds of race, color, or national origin.

(i) Deny a person any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program; or

(vii) Deny a person the opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of person to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program; may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.



(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

(4) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in [paragraph \(a\)](#) of this section.

(6) Examples demonstrating the application of the provisions of this section to certain types of Federal financial assistance administered by the Department of Transportation are contained in [appendix C of this part](#).

(7) This part does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where prior discriminatory practice or usage tends, on the grounds of race, color, or national origin to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, the applicant or recipient must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage. Even in the absence of prior discriminatory practice or usage, a recipient in administering a program or activity to which this part applies, is expected to take affirmative action to assure that no person is excluded from participation in or denied the benefits of the program or activity on the grounds of race, color, or national origin.

(c) Employment practices:

(1) Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). Such recipient shall take affirmative action to ensure that applicants are employed, and employees are treated during employment, without regard to their race, color, or national origin. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(2) Federal financial assistance to programs under laws funded or administered by the Department which have as a primary objective the providing of employment include those set forth in appendix B to this part.

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of [paragraph \(c\)\(1\)](#) of this section shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(d) A recipient may not make a selection of a site or location of a facility if the purpose of that selection, or its effect when made, is to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this rule applies, on the grounds of race, color, or national origin; or if the purpose is to, or its effect when made will, substantially impair the accomplishment of the objectives of this part.

[[35 FR 10080](#), June 18, 1970, as amended by Amdt. 72-2, [38 FR 17997](#), July 5, 1973; [68 FR 51389](#), Aug. 26, 2003]

## §21.7 Assurances required

### *(a) General.*

(1) Every application for Federal financial assistance to which this part applies, except an application to which [paragraph \(b\)](#) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by, an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. Every award of Federal financial assistance shall require the submission of such an assurance. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the 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, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended to the program. The Secretary shall specify the form of the foregoing assurances, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case where Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring 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. Where no transfer of property or interest therein from the Federal Government is involved, but property is acquired or improved with Federal financial assistance, the recipient shall agree to include such covenant in any subsequent transfer of such property. When the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the Secretary, such a condition and right of reverter is appropriate to the statute under which the real property is obtained and to the nature of the grant and the grantee. In such event 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 such property for the purposes for which the property was transferred, the Secretary may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to subordinate such right of reversion to the lien of such mortgage or other encumbrance.

(b) **Continuing Federal financial assistance.** Every application by a State or a State agency for continuing Federal financial assistance to which this part applies (including the types of Federal financial assistance listed in appendix A to this part) shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application:

(1) Contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and

(2) provide or be accompanied by provision for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part.

[[35 FR 10080](#), June 18, 1970, as amended at [68 FR 51389](#), Aug. 26, 2003]

## §21.9 Compliance information

(a) **Cooperation and assistance.** The Secretary shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) **Compliance reports.** Each recipient shall keep such records and submit to the Secretary timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the Secretary may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case in which a primary recipient extends

Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part. In general recipients should have available for the Secretary racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance.

(c) **Access to sources of information.** Each recipient shall permit access by the Secretary during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person fails or refuses to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) **Information to beneficiaries and participants.** Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program for which the recipient receives Federal financial assistance and make such information available to them in such manner, as the Secretary finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

[[35 FR 10080](#), June 18, 1970, as amended by Amdt. 72-2, [38 FR 17997](#), July 5, 1973; [68 FR 51389](#), Aug. 26, 2003]

## §21.11 Conduct Investigations

(a) **Periodic compliance reviews.** The Secretary shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) **Complaints.** Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Secretary a written complaint. A complaint must be filed not later than 180 days after the date of the alleged discrimination unless the time for filing is extended by the Secretary.

(c) **Investigations.** The Secretary will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation will include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) **Resolution of matters.**

(1) If an investigation pursuant to [paragraph \(c\)](#) of this section indicates a failure to comply with this part, the Secretary will so inform the recipient and the matter will be resolved by informal means

whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in [§ 21.13](#).

(2) If an investigation does not warrant action pursuant to [paragraph \(d\)\(1\)](#) of this section the Secretary will so inform the recipient and the complainant, if any, in writing.

(e) ***Intimidatory or retaliatory acts prohibited.*** No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

[[35 FR 10080](#), June 18, 1970, as amended by Amdt. 72-2, [38 FR 17997](#), July 5, 1973]

## §21.13 Procedure for effective compliance

(a) ***General.*** If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be affected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to:

(1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and

(2) any applicable proceeding under State or local law.

(b) ***Noncompliance with § 21.7.*** If an applicant fails or refuses to furnish an assurance required under [§ 21.7](#) or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of [paragraph \(c\)](#) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph. However, subject to [§ 21.21](#), the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application approved prior to the effective date of this part.

(c) ***Termination of or refusal to grant or to continue Federal financial assistance.*** No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until:

(1) The Secretary has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part;

(3) The action has been approved by the Secretary pursuant to [§ 21.17\(e\)](#); and

(4) The expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action.

Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) **Other means authorized by law.** No action to effect compliance with title VI of the Act by any other means authorized by law shall be taken by this Department until:

(1) The Secretary has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) The expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

## §21.15 Hearings

**(a) Opportunity for hearing.** Whenever an opportunity for a hearing is required by [§ 21.13\(c\)](#), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the Secretary that the matter be scheduled for hearing or

(2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a

hearing under section 602 of the Act and [§ 21.13\(c\)](#) and consent to the making of a decision on the basis of such information as is available.

(b) ***Time and place of hearing.*** Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the Secretary unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before the Secretary, or at his discretion, before a hearing examiner appointed in accordance with [section 3105 of title 5, United States Code](#), or detailed under [section 3344 of title 5, United States Code](#).

(c) ***Right to counsel.*** In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) ***Procedures, evidence, and record.***

(1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 554 through 557 of title 5, United States Code, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in [paragraph \(a\)](#) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer 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 and written findings shall be made.

(e) ***Consolidated or joint hearings.*** In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more Federal statutes, authorities, or other means by which Federal financial assistance is extended and to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules or procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with [§ 21.17](#).

[[35 FR 10080](#), June 18, 1970, as amended at [68 FR 51389](#), Aug. 26, 2003]

## §21.17 Decisions and notices

(a) **Procedure on decisions by hearing examiner.** If the hearing is held by a hearing examiner, the hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Secretary for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may, within 30 days after the mailing of such notice of initial decision, file with the Secretary his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Secretary may, on his own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of notice of review, the Secretary shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall, subject to [paragraph \(e\)](#) of this section, constitute the final decision of the Secretary.

(b) **Decisions on record or review by the Secretary.** Whenever a record is certified to the Secretary for decision or he reviews the decision of a hearing examiner pursuant to [paragraph \(a\)](#) of this section, or whenever the Secretary conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a written copy of the final decision of the Secretary shall be sent to the applicant or recipient and to the complainant, if any.

(c) **Decisions on record where a hearing is waived.** Whenever a hearing is waived pursuant to [§ 21.15](#), a decision shall be made by the Secretary on the record and a written copy of such decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) **Rulings required.** Each decision of a hearing examiner or the Secretary shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) **Approval by Secretary.** Any final decision by an official of the Department, other than the Secretary personally, which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Secretary personally, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) **Content of orders.** The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which this regulation applies, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance to which this regulation applies will thereafter be extended to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Secretary that it will fully comply with this part.



**(g) *Post termination proceedings.***

(1) An applicant or recipient adversely affected by an order issued under [paragraph \(f\)](#) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to [paragraph \(f\)](#) of this section may at any time request the Secretary to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of [paragraph \(g\)\(1\)](#) of this section. If the Secretary determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the Secretary denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying who it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record in accordance with rules or procedures issued by the Secretary. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of [paragraph \(g\)\(1\)](#) of this section.

While proceedings under this paragraph are pending, the sanctions imposed by the order issued under [paragraph \(f\)](#) of this section shall remain in effect.

[[35 FR 10080](#), June 18, 1970, as amended at [68 FR 51389](#), Aug. 26, 2003]

## **§21.19 Judicial review**

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

## **§21.21 Effect on other regulations, forms, and instructions**

**(a) *Effect on other regulations.*** All regulations, orders, or like directions issued before the effective date of this part by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the grounds of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for a recipient of such assistance for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part may be considered to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction before the effective date of this part. Nothing in this part, however, supersedes any of the following (including future amendments thereof):

(1) Executive Order 11246 ([3 CFR](#), 1965 Supp., p. 167) and regulations issued thereunder or

(2) any other orders, regulations, or instructions, insofar as such orders, 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.** The Secretary shall issue and promptly make available to all interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) **Supervision and coordination.** The Secretary may from time to time assign to officials of the Department, or 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 [§ 21.17](#)), including the achievement of effective coordination and maximum uniformity within the Department 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 paragraph shall have the same effect as though such action had been taken by the Secretary of this Department.

[[35 FR 10080](#), June 18, 1970, as amended at [68 FR 51389](#), Aug. 26, 2003]

## §21.23 Definitions

(a) **Applicant** means a person who submits an application, request, or plan required to be approved by the Secretary, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and “application” means such an application, request, or plan.

(b) **Facility** includes all or any part of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(c) **Federal financial assistance** includes:

(1) Grants and loans of Federal funds;

(2) The grant or donation of Federal property and interests in property;

(3) The detail of Federal personnel;

(4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and

(5) Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(d) **Primary recipient** means any recipient that is authorized or required to extend Federal financial assistance to another recipient.

(e) **Program or activity** and *program* mean all of the operations of any entity described in [paragraphs \(e\)\(1\)](#) 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 \(e\)\(1\)](#), [\(2\)](#), or [\(3\)](#) of this section.

(f) **Recipient** may mean any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or Nondiscrimination Program – Revised 6/2023

organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary.

(g) **Secretary** means the Secretary of Transportation or, except in [§ 21.17 \(e\)](#), any person to whom he has delegated his authority in the matter concerned.

[[35 FR 10080](#), June 18, 1970, as amended at [68 FR 51389](#), Aug. 26, 2003]

## Appendix A to Part 21

1. Use of grants made in connection with Federal-aid highway systems ([23 U.S.C. 101](#) *et seq.*).
2. Use of grants made in connection with the Highway Safety Act of 1966 ([23 U.S.C. 401](#) *et seq.*).
3. Use of grants in connection with the National Traffic and Motor Vehicle Safety Act of 1966 ([15 U.S.C. 1391-1409](#), [1421-1425](#)).
4. Lease of real property and the grant of permits, licenses, easements and rights-of-way covering real property under control of the Coast Guard ([14 U.S.C. 93](#) (n) and (o)).
5. Utilization of Coast Guard personnel and facilities by any State, territory, possession, or political subdivision thereof ([14 U.S.C. 141\(a\)](#)).
6. Use of Coast Guard personnel for duty in connection with maritime instruction and training by the States, territories, and Puerto Rico ([14 U.S.C. 148](#)).
7. Use of obsolete and other Coast Guard material by sea scout service of Boy Scouts of America, any incorporated unit of the Coast Guard auxiliary, and public body or private organization not organized for profit ([14 U.S.C. 641\(a\)](#)).
8. U.S. Coast Guard Auxiliary Program ([14 U.S.C. 821-832](#)).
9. Use of grants for the support of basic scientific research by nonprofit institutions of higher education and nonprofit organizations whose primary purpose is conduct of scientific research ([42 U.S.C. 1891](#)).
10. Use of grants made in connection with the Federal-aid Airport Program (secs. 1-15 and 17-20 of the Federal Airport Act, [49 U.S.C. 1101-1114](#), [1116-1120](#)).
11. Use of U.S. land acquired for public airports under:
  - a. Section 16 of the Federal Airport Act, [49 U.S.C. 1115](#); and

b. Surplus Property Act (sec. 13(g) of the Surplus Property Act of 1944, 50 U.S.C. App. 1622(g), and sec. 3 of the Act of Oct. 1, 1949, 50 U.S.C. App. 1622b).

12. Activities carried out in connection with the Aviation Education Program of the Federal Aviation Administration under sections 305, 311, and 313(a) of the Federal Aviation Act of 1958, as amended ([49 U.S.C. 1346](#), [1352](#), and [1354\(a\)](#)).

13. Use of grants and loans made in connection with public transportation programs (49 U.S.C. chapter 53).

14. Use of grants made in connection with the High Speed Ground Transportation Act, as amended ([49 U.S.C. 631-642](#)).

[[35 FR 10080](#), June 18, 1970, as amended at [79 FR 21405](#), Apr. 16, 2014]

## Appendix B to Part 21

(1) Appalachia Regional Development Act of 1965 (40 U.S.C. App. 1 *et seq.*).

## Appendix C to Part 21

**(a) Examples.** The following examples, without being exhaustive, illustrate the application of the nondiscrimination provisions of this part on projects receiving Federal financial assistance under the programs of certain Department of Transportation operating administrations:

### (1) **Federal Aviation Administration.**

(i) The airport sponsor or any of his lessees, concessionaires, or contractors may not differentiate between members of the public because of race, color, or national origin in furnishing, or admitting to, waiting rooms, passenger holding areas, aircraft tiedown areas, restaurant facilities, restrooms, or facilities operated under the compatible land use concept.

(ii) The airport sponsor and any of his lessees, concessionaires, or contractors must offer to all members of the public the same degree and type of service without regard to race, color, or national origin. This rule applies to fixed base operators, restaurants, snack bars, gift shops, ticket counters, baggage handlers, car rental agencies, limousines and taxis franchised by the airport sponsor, insurance underwriters, and other businesses catering to the public at the airport.

(iii) An aircraft operator may not be required to park his aircraft at a location that is less protected, or less accessible from the terminal facilities, than locations offered to others, because of his race, color, or national origin.

(iv) The pilot of an aircraft may not be required to help more extensively in fueling operations and may not be offered less incidental service (such as windshield wiping), than other pilots, because of his race, color, or national origin.

(v) No pilot or crewmember eligible for access to a pilot's lounge or to unofficial communication facilities such as a UNICOM frequency may be restricted in that access because of his race, color, or national origin.

(vi) Access to facilities maintained at the airport by air carriers or commercial operators for holders of first-class transportation tickets or frequent users of the carrier's or operator's services may not be restricted on the basis of race, color, or national origin.

(vii) Passengers and crewmembers seeking ground transportation from the airport may not be assigned to different vehicles, or delayed or embarrassed in assignment to vehicles, by the airport sponsor or his lessees, concessionaires, or contractors, because of race, color, or national origin.

(viii) Where there are two or more sites having equal potential to serve the aeronautical needs of the area, the airport sponsor shall select the site least likely to adversely affect existing communities. Such site selection shall not be made on the basis of race, color, or national origin.

(ix) Employment at obligated airports, including employment by tenants and concessionaires shall be available to all regardless of race, creed, color, sex, or national origin. The sponsor shall coordinate his airport plan with his local transit authority and the Federal Transit Administration to assure public transportation, convenient to the disadvantaged areas of nearby communities to enhance employment opportunities for the disadvantaged and minority population.

(x) The sponsor shall assure that the minority business community in his area is advised of the opportunities offered by airport concessions, and that bids are solicited from such qualified minority firms, and awards made without regard to race, color, or national origin.

**(2) *Federal Highway Administration.***

(i) The State, acting through its highway department, may not discriminate in its selection and retention of contractors, including without limitation, those whose services are retained for, or incidental to, construction, planning, research, highway safety, engineering, property management, and fee contracts and other commitments with person for services and expenses incidental to the acquisition of right-of-way.

(ii) The State may not discriminate against eligible persons in making relocation payments and in providing relocation advisory assistance where relocation is necessitated by highway right-of-way acquisitions.

(iii) Federal-aid contractors may not discriminate in their selection and retention of first-tier subcontractors, and first-tier subcontractors may not discriminate in their selection and retention of second-tier subcontractors, who participate in Federal-aid highway construction, acquisition of right-of-way and related projects, including those who supply materials and lease equipment.

(iv) The State may not discriminate against the traveling public and business users of the federally assisted highway in their access to and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest, recreation, and vehicle servicing) constructed on, over or under the right-of-way of such highways.

(v) Neither the State, any other persons subject to this part, nor its contractors and subcontractors may discriminate in their employment practices in connection with highway construction projects or other projects assisted by the Federal Highway Administration.

(vi) The State shall not locate or design a highway in such a manner as to require, on the basis of race, color, or national origin, the relocation of any persons.

(vii) The State shall not locate, design, or construct a highway in such a manner as to deny reasonable access to, and use thereof, to any persons on the basis of race, color, or national origin.

**(3) Federal Transit Administration.**

(i) Any person who is, or seeks to be, a patron of any public vehicle which is operated as a part of, or in conjunction with, a project shall be given the same access, seating, and other treatment with regard to the use of such vehicle as other persons without regard to their race, color, or national origin.

(ii) No person who is, or seeks to be, an employee of the project sponsor or lessees, concessionaires, contractors, licensees, or any organization furnishing public transportation service as a part of, or in conjunction with, the project shall be treated less favorably than any other employee or applicant with regard to hiring, dismissal, advancement, wages, or any other conditions and benefits of employment, on the basis of race, color, or national origin.

(iii) No person or group of persons shall be discriminated against with regard to the routing, scheduling, or quality of service of transportation service furnished as a part of the project on the basis of race, color, or national origin. Frequency of service, age and quality of vehicles assigned to routes, quality of stations serving different routes, and location of routes may not be determined on the basis of race, color, or national origin.

(iv) The location of projects requiring land acquisition and the displacement of persons from their residences and businesses may not be determined on the basis of race, color, or national origin.

**(b) Obligations of the airport operator -**

**(1) Tenants, contractors, and concessionaires.** Each airport operator shall require each tenant, contractor, and concessionaire who provides any activity, service, or facility at the airport under lease, contract with, or franchise from the airport, to covenant in a form specified by the Administrator, Federal Aviation Administration, that he will comply with the nondiscrimination requirements of this part.

(2) **Notification of beneficiaries.** The airport operator shall:

(i) Make a copy of this part available at his office for inspection during normal working hours by any person asking for it, and

(ii) conspicuously display a sign, or signs, furnished by the FAA, in the main public area or areas of the airport, stating that discrimination based on race, color, or national origin is prohibited on the airport.

(3) **Reports.** Each airport owner subject to this part shall, within 15 days after he receives it, forward to the Area Manager of the FAA Area in which the airport is located a copy of each written complaint charging discrimination because of race, color, or national origin by any person subject to this part, together with a statement describing all actions taken to resolve the matter, and the results thereof. Each airport operator shall submit to the area manager of the FAA area in which the airport is located a report for the preceding year on the date and in a form prescribed by the Federal Aviation Administrator.

[[35 FR 10080](#), June 18, 1970, as amended by Amdt. 21-1, [38 FR 5875](#), Mar. 5, 1973; Amdt. 21-3, [40 FR 14318](#), Mar. 31, 1975; [79 FR 21405](#), Apr. 16, 2014]



**49 CFR Part 27.7**

<https://www.ecfr.gov/current/title-49/subtitle-A/part-27/subpart-A/section-27.7>

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**§ 27.7 Discrimination prohibited.**

- (a) **General.** No qualified person with a disability shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance administered by the Department of Transportation.
- (b) **Discriminatory actions prohibited.**
  - (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability:
    - (i) Deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
    - (ii) Afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not substantially equal to that afforded persons who are not disabled;
    - (iii) Provide a qualified person with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as persons who are not disabled;
    - (iv) Provide different or separate aid, benefits, or services to persons with a disability or to any class of persons with a disability unless such action is necessary to provide qualified persons with a disability with aid, benefits or services that are as effective as those provided to persons who are not disabled;
    - (v) Aid or perpetuate discrimination against a qualified person with a disability by providing financial or other 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 person with a disability the opportunity to participate in conferences, in planning or advising recipients, applicants or would-be applicants, or
    - (vii) Otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.



- (5) In determining the site or location of a facility, an applicant or a recipient may not make selections:
  - (i) That have the effect of excluding persons with a disability 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 persons with a disability.
- (6) 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.



- (c) **Communications.** Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.
- (d) **Aid, benefits, or services limited by Federal law.** For aid, benefits, or services authorized by Federal statute or executive order that are designed especially for persons with a disability, or for a particular class of persons with a disability, the exclusion of persons without a disability or other classes of persons with a disability is not prohibited by this part.
- (e) **Reasonable accommodations.** 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. For the purposes of this section, the term reasonable accommodation shall be interpreted in a manner consistent with the term "reasonable modifications" as set forth in the Americans with Disabilities Act title II regulations at [28 CFR 35.130\(b\)\(7\)](#), and not as it is defined or interpreted for the purposes of employment discrimination under title I of the ADA ([42 U.S.C. 12111-12112](#)) and its implementing regulations at [29 CFR part 1630](#).

[44 FR 31468, May 31, 1979, as amended at 68 FR 51390, Aug. 26, 2003; 79 FR 21405, Apr. 16, 2014; 80 FR 13260, Mar. 13, 2015]

**49 CFR Part 27.11**

<https://www.ecfr.gov/current/title-49/subtitle-A/part-27/subpart-A/section-27.11>

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**§ 27.11 Remedial action, voluntary action and compliance planning.**

**(a) Remedial action.**

- (1) If the responsible Departmental official finds that a qualified person with a disability has been excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under, any program or activity in violation of this part, the recipient shall take such remedial action as the responsible Departmental official deems necessary to overcome the effects of the violation.
- (2) Where a recipient is found to have violated this part, and where another recipient exercises control over the recipient that has violated this part, the responsible Departmental official, where appropriate, may require either or both recipients to take remedial action.
- (3) The responsible Departmental official may, where necessary to overcome the effects of a violation of this part, require a recipient to take remedial action:
  - (i) With respect to persons with a disability 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, and
  - (ii) With respect to persons with a disability who would have been participants in the program or activity had the discrimination not occurred.

**(b) Voluntary action.** A recipient may take steps, in addition to any action that is required by this part, to assure the full participation in the recipient's program or activity by qualified persons with a disability.

**(c) Compliance planning.**

- (1) A recipient shall, within 90 days from the effective date of this part, designate and forward to the head of any operating administration providing financial assistance, with a copy to the responsible Departmental official the names, addresses, and telephone numbers of the persons responsible for evaluating the recipient's compliance with this part.
- (2) A recipient shall, within 180 days from the effective date of this part, after consultation at each step in paragraphs (c)(2) (i)-(iii) of this section with interested persons, including persons with a disability and organizations representing persons with a disability:
  - (i) Evaluate its current policies and practices for implementing these regulations, and notify the head of the operating administration of the completion of this evaluation;
  - (ii) Identify shortcomings in compliance and describe the methods used to remedy them;
  - (iii) Begin to modify, with official approval of recipient's management, any policies or practices that do not meet the requirements of this part according to a schedule or sequence that includes milestones or measures of achievement. These modifications shall be completed within one year from the effective date of this part;
  - (iv) Take appropriate remedial steps to eliminate the effects of any discrimination that resulted from previous policies and practices; and
  - (v) Establish a system for periodically reviewing and updating the evaluation.
- (3) A recipient shall, for at least three years following completion of the evaluation required under paragraph (c)(2) of this section, maintain on file, make available for public inspection, and furnish upon request to the head of the operating administration:
  - (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.

[44 FR 31468, May 31, 1979, as amended at 68 FR 51390, Aug. 26, 2003; 79 FR 21405, Apr. 16, 2014]

## **49 CFR Part 27.13**

<https://www.ecfr.gov/current/title-49/subtitle-A/part-27/subpart-A/section-27.13>

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### **§ 27.13 Designation of responsible employee and adoption of complaint procedures.**

- (a) *Designation of responsible employee.* Each recipient shall designate at least one person to coordinate its efforts to comply with this part.
- (b) *Adoption of complaint procedures.* A recipient shall adopt procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part and [49 CFR parts 37, 38, and 39](#). The procedures shall meet the following requirements:
  - (1) The process for filing a complaint, including the name, address, telephone number, and email address of the employee designated under [paragraph \(a\)](#) of this section, must be sufficiently advertised to the public, such as on the recipient's Web site;
  - (2) The procedures must be accessible to and usable by individuals with disabilities;
  - (3) The recipient must promptly communicate its response to the complaint allegations, including its reasons for the response, to the complainant by a means that will result in documentation of the response.

[80 FR 13260, Mar. 13, 2015]

## **49 CFR Part 27.15**

<https://www.ecfr.gov/current/title-49/subtitle-A/part-27/subpart-A/section-27.15>

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### **§ 27.15 Notice.**

- (a) A recipient shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of disability. 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 § 27.13(a). A recipient shall make the initial notification required by this section within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications 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 paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications. In either case, the addition or revision must be specially noted.

**49 CFR Part 27.71**

<https://www.ecfr.gov/current/title-49/subtitle-A/part-27/subpart-B/section-27.71>

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**§ 27.71 Airport facilities.**

- (a) This section applies to all terminal facilities and services owned, leased, or operated on any basis by a recipient of DOT financial assistance at a commercial service airport, including parking and ground transportation facilities.
- (b) Airport operators shall ensure that the terminal facilities and services subject to this section shall be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Airport operators shall be deemed to comply with this section 504 obligation if they meet requirements applying to state and local government programs or activities and facilities under Department of Justice (DOJ) regulations implementing Title II of the Americans with Disabilities Act (ADA).
- (c) The airport shall ensure that there is an accessible path between the gate and the area from which aircraft are boarded.
- (d) Systems of inter-terminal transportation, including, but not limited to, shuttle vehicles and people movers, shall comply with applicable requirements of the Department of Transportation's ADA rules.
- (e) The Americans with Disabilities Act Accessibility Guidelines (ADAAGs), including [section 10.4](#) concerning airport facilities, shall be the standard for accessibility under this section.
- (f) Contracts or leases between carriers and airport operators concerning the use of airport facilities shall set forth the respective responsibilities of the parties for the provision of accessible facilities and services to individuals with disabilities as required by this part and applicable ADA rules of the Department of Transportation and Department of Justice for airport operators and applicable Air Carrier Access Act rules ([49 CFR part 382](#)) for carriers.
- (g) If an airport operator who receives Federal financial assistance for an existing airport facility has not already done so, the recipient shall submit a transition plan meeting the requirements of [§ 27.65\(d\) of this part](#) to the FAA no later than March 3, 1997.

- (h) **Service animal relief areas.** Each airport with 10,000 or more annual enplanements shall cooperate with airlines that own, lease, or control terminal facilities at that airport to provide wheelchair accessible animal relief areas for service animals that accompany passengers departing, connecting, or arriving at the airport subject to the following requirements:
  - (1) Airports must consult with one or more service animal training organizations regarding the design, dimensions, materials and maintenance of service animal relief areas;
  - (2) Airports must establish at least one relief area in each airport terminal;
  - (3) Airports must establish the relief area required by paragraph (h)(2) of this section in the sterile area of each airport terminal unless:
    - (i) The Transportation Security Administration prohibits the airport from locating a relief area in the sterile area, or
    - (ii) A service animal training organization, the airport, and the carriers in the terminal in which the relief area will be located agree that a relief area would be better placed outside the terminal's sterile area. In that event, the airport must retain documentation evidencing the recommendation that the relief area be located outside of the sterile area; and

- (4) To the extent airports have established service animal relief areas prior to the effective date of this paragraph:
  - (i) Airports that have not consulted with a service animal training organization shall consult with one or more such organizations regarding the sufficiency of all existing service animal relief areas,
  - (ii) Airports shall meet the requirements of this section August 4, 2016.
- (i) **High-contrast captioning (captioning that is at least as easy to read as white letters on a consistent black background) on television and audio-visual displays.** This paragraph applies to airports with 10,000 or more annual enplanements.
  - (1) Airport operators must enable or ensure high-contrast captioning at all times on all televisions and other audio-visual displays that are capable of displaying captions and that are located in any gate area, ticketing area, first-class or other passenger lounge provided by a U.S. or foreign carrier, or any common area of the terminal to which any passengers have access and that are owned, leased, or controlled by the airport.
  - (2) With respect to any televisions and other audio-visual displays located in any gate area, ticketing area, first-class or other passenger lounge provided by a U.S. or foreign carrier, or any common area of the terminal to which any passengers have access that provide passengers with safety briefings, information, or entertainment that do not have high-contrast captioning capability, an airport operator must replace or ensure the replacement of these devices with equipment that does have such capability whenever such equipment is replaced in the normal course of operations and/or whenever areas of the terminal in which such equipment is located undergo substantial renovation or expansion.
  - (3) If an airport installs new televisions and other audio-visual displays for passenger safety briefings, information, or entertainment on or after October 5, 2015, such equipment must have high-contrast captioning capability.
- (j) Shared-use automated airport kiosks. This paragraph applies to U.S. airports with 10,000 or more annual enplanements.

- (1) Airport operators that jointly own, lease, or control automated airport kiosks with carriers at U.S. airports must ensure that all shared-use automated kiosks installed on or after December 12, 2016 meet the design specifications set forth in [paragraph \(k\)](#) of this section until at least 25 percent of kiosks provided in each location at the airport (i.e., each cluster of kiosks and all stand-alone kiosks at the airport) meet this specification.
  - (2) Airport operators must ensure that at least 25 percent of shared-use automated airport kiosks they jointly own, lease, or control with carriers in each location at the airport meet the design specifications in [paragraph \(k\)](#) of this section by December 12, 2022.
  - (3) When shared-use kiosks provided in a location at the airport perform more than one function (e.g., print boarding passes/bag tags, accept payment for flight amenities such as seating upgrades/meals/WiFi access, rebook tickets, etc.), the accessible kiosks must provide all the same functions as the inaccessible kiosks in that location.
  - (4) Each shared-use automated kiosk that meets the design specifications in [paragraph \(k\)](#) of this section must be visually and tactilely identifiable to users as accessible (e.g., an international symbol of accessibility affixed to the front of the device) and maintained in proper working condition.
  - (5) Airport operators are jointly and severally liable with carriers for ensuring that shared-use automated airport kiosks are compliant with the requirements of [paragraphs \(j\)](#) and [\(k\)](#) of this section.
- (k) Shared-use automated airport kiosks provided in accordance with [paragraph \(j\)](#) of this section must conform to the following technical accessibility standards with respect to their physical design and the functions they perform:

- (1) **Self contained.** Except for personal headsets and audio loops, automated kiosks must be operable without requiring the user to attach assistive technology.
- (2) **Clear floor or ground space.** A clear floor or ground space complying with section 305 of the U.S. Department of Justice's 2010 ADA Standards for Accessible Design, [28 CFR 35.104](#) (defining the "2010 Standards" for title II as the requirements set forth in appendices B and D to [36 CFR part 1191](#) and the requirements contained in [28 CFR 35.151](#)) (hereinafter 2010 ADA Standards) must be provided.
- (3) **Operable parts.** Operable parts must comply with section 309 of the 2010 ADA Standards, and the following requirements:
  - (i) **Identification.** Operable parts must be tactilely discernible without activation;
  - (ii) **Timing.** Where a timed response is required, the user must be alerted visually and by touch or sound and must be given the opportunity to indicate that more time is required;
  - (iii) **Status indicators.** Status indicators, including all locking or toggle controls or keys (e.g., Caps Lock and Num Lock keys), must be discernible visually and by touch or sound; and
  - (iv) **Color.** Color coding must not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.
- (4) **Privacy.** Automated airport kiosks must provide the opportunity for the same degree of privacy of input and output available to all individuals. However, if an option is provided to blank the screen in the speech output mode, the screen must blank when activated by the user, not automatically.
- (5) **Output.** Automated airport kiosks must comply with [paragraphs \(k\)\(5\)\(i\)](#) through [\(iv\)](#) of this section.

- (i) **Speech output enabled.** Automated airport kiosks must provide an option for speech output. Operating instructions and orientation, visible transaction prompts, user input verification, error messages, and all other visual information for full use must be accessible to and independently usable by individuals with vision impairments. Speech output must be delivered through a mechanism that is readily available to all users, including but not limited to, an industry standard connector or a telephone handset. Speech output must be recorded or digitized human, or synthesized. Speech output must be coordinated with information displayed on the screen. Speech output must comply with [paragraphs \(k\)\(5\)\(i\)\(A\)](#) through [\(D\)](#) of this section.
  - (A) When asterisks or other masking characters are used to represent personal identification numbers or other visual output that is not displayed for security purposes, the masking characters must be spoken ("\*" spoken as "asterisk") rather than presented as beep tones or speech representing the concealed information.
  - (B) Advertisements and other similar information are not required to be audible unless they convey information that can be used in the transaction being conducted.
  - (C) Speech for any single function must be automatically interrupted when a transaction is selected or navigation controls are used. Speech must be capable of being repeated and paused by the user.
  - (D) Where receipts, tickets, or other outputs are provided as a result of a transaction, speech output must include all information necessary to complete or verify the transaction, except that -
    - (1) Automated airport kiosk location, date and time of transaction, customer account numbers, and the kiosk identifier are not required to be audible;
    - (2) Information that duplicates information available on-screen and already presented audibly is not required to be repeated; and



(3) Printed copies of a carrier's contract of carriage, applicable fare rules, itineraries and other similar supplemental information that may be included with a boarding pass are not required to be audible.

(ii) **Volume control.** Automated kiosks must provide volume control complying with paragraphs (k)(5)(ii)(A) and (B) of this section.

(A) **Private listening.** Where speech required by paragraph (k)(5)(i) is delivered through a mechanism for private listening, the automated kiosk must provide a means for the user to control the volume. A function must be provided to automatically reset the volume to the default level after every use.

(B) **Speaker volume.** Where sound is delivered through speakers on the automated kiosk, incremental volume control must be provided with output amplification up to a level of at least 65 dB SPL. Where the ambient noise level of the environment is above 45 dB SPL, a volume gain of at least 20 dB above the ambient level must be user selectable. A function must be provided to automatically reset the volume to the default level after every use.

(iii) **Captioning.** Multimedia content that contains speech or other audio information necessary for the comprehension of the content must be open or closed captioned.

Advertisements and other similar information are not required to be captioned unless they convey information that can be used in the transaction being conducted.

(iv) **Tickets and boarding passes.** Where tickets or boarding passes are provided, tickets and boarding passes must have an orientation that is tactilely discernible if orientation is important to further use of the ticket or boarding pass.

(6) **Input.** Input devices must comply with paragraphs (k)(6)(i) through (iv) of this section.

(i) **Input controls.** At least one input control that is tactilely discernible without activation must be provided for each function. Where provided, key surfaces not on active areas of display screens, must be raised above surrounding surfaces. Where touch or membrane keys are the only method of input, each must be tactilely discernible from surrounding surfaces and adjacent keys.

(ii) **Alphabetic keys.** Alphabetic keys must be arranged in a QWERTY keyboard layout. The "F" and "J" keys must be tactilely distinct from the other keys.

(iii) **Numeric keys.** Numeric keys must be arranged in a 12-key ascending or descending keypad layout or must be arranged in a row above the alphabetic keys on a QWERTY keyboard. The "5" key must be tactilely distinct from the other keys.

(iv) **Function keys.** Function keys must comply with paragraphs (k)(6)(iv)(A) and (B) of this section.

(A) **Contrast.** Function keys must contrast visually from background surfaces. Characters and symbols on key surfaces must contrast visually from key surfaces. Visual contrast must be either light-on-dark or dark-on-light. However, tactile symbols required by (k)(6)(iv)(B) are not required to comply with paragraph (k)(6)(iv)(A) of this section.

(B) **Tactile symbols.** Function key surfaces must have tactile symbols as follows: Enter or Proceed key: raised circle; Clear or Correct key: raised left arrow; Cancel key: raised letter ex; Add Value key: raised plus sign; Decrease Value key: raised minus sign.

(7) **Display screen.** The display screen must comply with paragraphs (k)(7)(i) and (ii) of this section.

(i) **Visibility.** The display screen must be visible from a point located 40 inches (1015 mm) above the center of the clear floor space in front of the automated kiosk.

- (ii) **Characters.** Characters displayed on the screen must be in a sans serif font. Characters must be 3/16 inch (4.8 mm) high minimum based on the uppercase letter "I." Characters must contrast with their background with a minimum luminosity contrast ratio of 3:1.
- (8) **Braille instructions.** Braille instructions for initiating the speech mode must be provided. Braille must comply with [section 703.3](#) of the 2010 ADA Standards.
- (9) **Biometrics.** Biometrics must not be the only means for user identification or control, unless at least two biometric options that use different biological characteristics are provided.

[61 FR 56424, Nov. 1, 1996, as amended at 68 FR 51391, Aug. 26, 2003; 78 FR 67917, Nov. 12, 2013; 80 FR 46513, Aug. 5, 2015]

**49 CFR Part 27.72**

<https://www.ecfr.gov/current/title-49/subtitle-A/part-27/subpart-B/section-27.72>

▶ **§ 27.72 Boarding assistance for aircraft.**

- (a) This section applies to airports with 10,000 or more annual enplanements.
- (b) Airports shall, in cooperation with carriers serving the airports, provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other devices that do not require employees to lift or carry passengers up stairs. This section applies to all aircraft with a passenger capacity of 19 or more passenger seats, except as provided in [paragraph \(e\)](#) of this section. [Paragraph \(c\)](#) of this section applies to U.S. carriers and [paragraph \(d\)](#) of this section applies to foreign carriers.
- (c) Each airport operator shall negotiate in good faith with each U.S. carrier serving the airport concerning the acquisition and use of boarding assistance devices to ensure the provision of mechanical lifts, ramps, or other devices for boarding and deplaning where level-entry loading bridges are not available. The airport operator must have a written, signed agreement with each U.S. carrier allocating responsibility for meeting the boarding and deplaning assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.
  - (1) All airport operators and U.S. carriers involved are jointly and severally responsible for the timely and complete implementation of the agreement.
  - (2) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.
- (d) Each airport operator shall negotiate in good faith with each foreign carrier serving the airport concerning the acquisition and use of boarding assistance devices to ensure the provision of mechanical lifts, ramps, or other devices for boarding and deplaning where level-entry loading bridges are not available. The airport operator shall, by no later than November 3, 2015, sign a written agreement with the foreign carrier allocating responsibility for meeting the boarding and deplaning assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.
  - (1) The agreement shall provide that all actions necessary to ensure accessible boarding and deplaning for passengers with disabilities are completed as soon as practicable, but no later than December 3, 2015.

- (2) All airport operators and foreign carriers involved are jointly and severally responsible for the timely and complete implementation of the agreement.
- (3) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.
- (e) Boarding assistance agreements required in [paragraphs \(c\)](#) and [\(d\)](#) of this section are not required to apply to the following situations:
  - (1) Access to float planes;
  - (2) Access to the following 19-seat capacity aircraft models: The Fairchild Metro, the Jetstream 31 and 32, the Beech 1900 (C and D models), and the Embraer EMB-120;
  - (3) Access to any other aircraft model determined by the Department of Transportation to be unsuitable for boarding and deplaning assistance by lift, ramp, or other suitable device. The Department will make such a determination if it concludes that -
    - (i) No existing boarding and deplaning assistance device on the market will accommodate the aircraft without significant risk of serious damage to the aircraft or injury to passengers or employees, or



(ii) Internal barriers are present in the aircraft that would preclude passengers who use a boarding or aisle chair from reaching a non-exit row seat.

(f) When level-entry boarding and deplaning assistance is not required to be provided under [paragraph \(e\)](#) of this section, or cannot be provided as required by [paragraphs \(b\), \(c\), and \(d\)](#) of this section (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents. However, hand-carrying (i.e., directly picking up the passenger's body in the arms of one or more carrier personnel to effect a level change the passenger needs to enter or leave the aircraft) must never be used, even if the passenger consents, unless this is the only way of evacuating the individual in the event of an emergency.

(g) In the event that airport personnel are involved in providing boarding assistance, the airport shall ensure that they are trained to proficiency in the use of the boarding assistance equipment used at the airport and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

[80 FR 46514, Aug. 5, 2015]

## **49 CFR Part 27.121**

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### **§ 27.121 Compliance information.**

- (a) **Cooperation and assistance.** The responsible Departmental official, to the fullest extent practicable, seeks the cooperation of recipients in securing compliance with this part and provides assistance and guidance to recipients to help them comply with this part.
- (b) **Compliance reports.** Each recipient shall keep on file for one year all complaints of noncompliance received. A record of all such complaints, which may be in summary form, shall be kept for five years. Each recipient shall keep such other records and submit to the responsible Departmental official or his/her designee timely, complete, and accurate compliance reports at such times, and in such form, and containing such information as the responsible Department official may prescribe. In the case in which a primary recipient extends Federal financial assistance to any other recipient, the other recipient shall also submit compliance reports to the primary recipient so as to enable the primary recipient to prepare its report.
- (c) **Access to sources of information.** Each recipient shall permit access by the responsible Departmental official or his/her designee during normal business hours to books, records, accounts, and other sources of information, and to facilities that are pertinent to compliance with this part. Where required information is in the exclusive possession of another agency or person who fails or refuses to furnish the information, the recipient shall so certify in its report and describe the efforts made to obtain the information. Considerations of privacy or confidentiality do not bar the Department from evaluating or seeking to enforce compliance with this part. Information of a confidential nature obtained in connection with compliance evaluation or enforcement is not disclosed by the Department, except in formal enforcement proceedings, where necessary, or where otherwise required by law.
- (d) **Information to beneficiaries and participants.** Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its application to the program or activity for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Departmental official finds necessary to apprise them of the protections against discrimination provided by the Act and this part.

[44 FR 31468, May 31, 1979. Redesignated at 56 FR 45621, Sept. 6, 1991. 68 FR 51391, Aug. 26, 2003]

**Title 49 Subtitle A Part 28**

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Secretary at the hearing that it satisfied the requirements of paragraph (f)(1) of this section.

(4) The hearing procedures of §27.127(b) through (c) and paragraphs (a) through (d) of this section apply to hearings held under paragraph (f)(3) of this section.

(5) While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) of this section shall remain in effect.

[44 FR 31468, May 31, 1979. Redesignated at 56 FR 45621, Sept. 6, 1991, 68 FR 51391, Aug. 26, 2003]

**PART 28—ENFORCEMENT OF NON-DISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF TRANSPORTATION**

Sec.

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AUTHORITY: 29 U.S.C. 794

SOURCE: 56 FR 37296, Aug. 6, 1991, unless otherwise noted.

**§ 28.101 Purpose.**

The purpose of this part is to carry out 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

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discrimination on the basis of handicap in programs or activities conducted by Executive agencies, including this Department, or the United States Postal Service. 49 CFR part 27 implements section 504 in the Department's financial assistance programs.

**§ 28.102 Application.**

This part applies to all programs or activities conducted by the Department except for programs and activities conducted outside the United States that do not involve individuals with handicaps in the United States.

**§ 28.103 Definitions.**

For purposes of this part, the term—  
*Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, United States 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 Department. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, 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.

*Complete complaint* means a written statement that contains the complainant's name and address and describes the Department's alleged discriminatory actions in sufficient detail to inform the Department 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.

*Current illegal use of drugs* means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or

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that continuing use is a real and ongoing problem.

*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).

*Department* or *DOT* means the U.S. Department of Transportation, including the Office of the Secretary and all operating administrations.

*Departmental Element* (or “DOT element”) means any one of the following organizations within the Department:

- (a) Office of the Secretary (OST).
- (b) United States Coast Guard (USCG).
- (c) Federal Aviation Administration (FAA).
- (d) Federal Highway Administration (FHWA).
- (e) Federal Railroad Administration (FRA).
- (f) National Highway Traffic Safety Administration (NHTSA).
- (g) Federal Transit Administration (FTA).
- (h) Research and Special Programs Administration (RSPA).
- (i) Maritime Administration (MARAD).
- (j) St. Lawrence Seaway Development Corporation (SLSDC).

*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.

*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.

*Individual with handicaps* 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*—
  - (i) Includes any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one

or more of the following body systems: Neurological; muscular; skeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine;

(ii) Includes any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities; and

(iii) Includes, but is not limited to, such diseases or conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, 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—

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Department 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 paragraph (1) of this definition but is treated by the Department as having such an impairment.

*Qualified individual with handicaps* means—

(1) With respect to education services provided by the U.S. Merchant Marine Academy or the U.S. Coast Guard Academy, an individual with handicaps who meets the essential eligibility requirements for participation in and receipt of such services, including the physical standards applicable to the U.S. Naval Reserve or the U.S. Coast Guard.



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(2) With respect to any other Department program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps 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 Department can demonstrate would result in a fundamental alteration in its nature. The essential eligibility requirements include the ability to participate without endangering the safety of the individual or others.

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity and

(4) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by §28.140.

*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), the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955); the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810); the Civil Rights Restoration Act of 1987 (Pub. L. 100-259, 102 Stat. 28), and Handicapped Program Technical Amendments Act of 1988 (Pub. L. 100-630, 102 Stat. 3312). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

[56 FR 37296, Aug. 6, 1991, as amended at 61 FR 32354, June 24, 1996]

**§§ 28.104–28.109 [Reserved]**

**§ 28.110 Self-evaluation.**

(a) The Department shall, by one year of the effective date of this part, evaluate its current policies and practices, and 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 Department shall pro-

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ceed to make the necessary modifications.

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

(c) The Department shall, until at least three years following completion of the evaluation required under paragraph (a) of this section, or until such time as all modifications identified by the self-evaluation to be necessary to comply with section 504 have been completed, whichever occurs later, maintain on file and make available for public inspection—

(1) A description of areas examined, regulations and nonregulatory criteria reviewed, and any problems identified; and

(2) A description of any modifications made.

**§ 28.111 Notice.**

The Department 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 programs or activities conducted by the Department, and make such information available to them in such manner as the Department finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

**§§ 28.112–28.129 [Reserved]**

**§ 28.130 General prohibition against discrimination.**

(a) No qualified individual with handicaps 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 Department.

(b)(1) The Department, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangement, on the basis of handicap—

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

(ii) Afford a qualified individual with handicaps 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 individual with handicaps 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 handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

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

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

(2) The Department may not deny a qualified individual with handicaps 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 Department 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 handicaps 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 individuals with handicaps.

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

(1) Exclude individuals with handicaps from, deny them the benefits of,

or otherwise subject them to discrimination under any program or activity conducted by the Department; or

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

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

(6) The Department may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the Department establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the Department are not, themselves, covered by this part. The Department may limit the programs or activities of a licensee or certificate holder, who is a qualified individual with handicaps, to the extent necessary to ensure the safety of that person or the safety of others.

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

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

**§ 28.131 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—

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(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 rehabilitation services.* The agency shall not deny health services or services provided under titles I, II, and III of the Rehabilitation Act to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(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 engaging in current illegal use of drugs.

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

**§§ 28.132–28.139 [Reserved]**

**§ 28.140 Employment.**

(a) No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Department.

(b) 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. The provisions of this section do not apply to military personnel of the U.S. Coast Guard.

**§§ 28.141–28.148 [Reserved]**

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

Except as otherwise provided in §28.150, no qualified individual with handicaps shall, because the Department's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or other-

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wise be subjected to discrimination under any program or activity conducted by the Department.

**§ 28.150 Program accessibility: Existing facilities.**

(a) *General.* The Department 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 handicaps. This paragraph does not—

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

(2) [Reserved]

(3) Require the Department 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 personnel of a DOT element believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the DOT element has the burden of proving that compliance with §28.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Secretary or his or her designee, after considering all resources available for use in the funding and operation of the 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 Department shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The Department 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

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its programs or activities readily accessible to and usable by individuals with handicaps. The Department is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The Department, 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 Department shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The Department shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible. Provided that, where major restructuring of fixed facilities to accommodate technological changes is planned to occur within five years from the effective date of this part, changes needed to comply with this section are not required to be made until the planned restructuring takes place. However, alternative means for participation by individuals with handicaps in DOT programs and activities in the most integrated setting possible during this interim waiting period shall be available.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Department shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps, agency employees with handicaps, or organizations representing individuals with handicaps, 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 Department's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(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.

**§ 28.151 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 Department shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600-607, apply to buildings covered by this section, except for military facilities of the Coast Guard, which are covered by 32 CFR part 56.

**§§ 28.152-28.159 [Reserved]**

**§ 28.160 Communications.**

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

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

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

(ii) The Department need not provide individually prescribed devices, readers

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for personal use or study, or other devices of a personal nature to applicants or participants in programs.

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

(b) The Department 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 Department shall provide signs at each primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information as to the location of 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 Department 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 personnel of a DOT element believe that the proposed action would fundamentally alter the program or activity or would result in an undue financial and administrative burden, the DOT element has the burden of proving that compliance with § 28.160 would result in such alteration or burden. The decision that compliance would result in such alteration or burden must be made by the Secretary or his or her designee, after considering all resources available for use in the funding and operation of the 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 Department shall take any other action that would not result in such an alteration or such a burden but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

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**§§ 28.161–28.169 [Reserved]**

**§ 28.170 Compliance procedures.**

(a) Except as provided in paragraph (b) of this section, paragraphs (c)–(k) of this section apply to all allegations of discrimination on the basis of handicap in programs of activities conducted by the Department;

(b)(1) The Department 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).

(2) The Department shall process complaints alleging violations of section 504 with respect to requirements of any Department safety regulation, concerning an individual's qualifications to perform a function or to receive a certificate or license, according to the procedures for a petition for an individual waiver or request for review of a standard for possible amendment or recession. The Departmental element shall inform the complainant, in writing, or the decision on the request. The complainant may request reconsideration by the Departmental element of the decision. The decision on the petition or request shall constitute the Department's final action in the matter.

(c) Responsibility for implementation and operation of this section shall be vested in the Director, Departmental Office of Civil Rights.

(d)(1) The Department 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 Department may extend this time period for good cause.

(2) If the subject matter of a complete complaint concerns a decision by a Departmental element, under a safety regulation, concerning an individual's qualifications to perform a function or to receive a certificate or license, and the complainant has available within the Departmental element a formal review or appeal mechanism

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concerning that decision, the Department shall not take action on the complaint until the Departmental element's review or appeal process has been completed.

(e) If the Department 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 Department 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 handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the Department 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 Department of the letter required by §28.170(g). The Department may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Assistant Secretary for Transportation Policy. The appeal will not be heard by the same person who made the initial determination on the request. The decision on the appeal shall constitute the Department's final action in the matter.

(j) The Department shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the Department determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its 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.

(1) The Department 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.

[56 FR 37296, Aug. 6, 1991, as amended at 59 FR 10061, Mar. 3, 1994]

§§ 28.171-28.999 [Reserved]

**49 CFR Part 37.5**

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**§ 37.5 Nondiscrimination.**

- (a) No entity shall discriminate against an individual with a disability in connection with the provision of transportation service.
- (b) Notwithstanding the provision of any special transportation service to individuals with disabilities, an entity shall not, on the basis of disability, deny to any individual with a disability the opportunity to use the entity's transportation service for the general public, if the individual is capable of using that service.
- (c) An entity shall not require an individual with a disability to use designated priority seats, if the individual does not choose to use these seats.
- (d) An entity shall not impose special charges, not authorized by this part, on individuals with disabilities, including individuals who use wheelchairs, for providing services required by this part or otherwise necessary to accommodate them.
- (e) An entity shall not require that an individual with disabilities be accompanied by an attendant.
- (f) Private entities that are primarily engaged in the business of transporting people and whose operations affect commerce shall not discriminate against any individual on the basis of disability in the full and equal enjoyment of specified transportation services. This obligation includes, with respect to the provision of transportation services, compliance with the requirements of the rules of the Department of Justice concerning eligibility criteria, making reasonable modifications, providing auxiliary aids and services, and removing barriers (28 CFR 36.301-36.306).
- (g) An entity shall not refuse to serve an individual with a disability or require anything contrary to this part because its insurance company conditions coverage or rates on the absence of individuals with disabilities or requirements contrary to this part.
- (h) It is not discrimination under this part for an entity to refuse to provide service to an individual with disabilities because that individual engages in violent, seriously disruptive, or illegal conduct, or represents a direct threat to the health or safety of others. However, an entity shall not refuse to provide service to an individual with disabilities solely because the individual's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience employees of the entity or other persons.

(i) **Public and private entity distinctions.** -

- (1) **Private entity-private transport.** Private entities that are primarily engaged in the business of transporting people and whose operations affect commerce shall not discriminate against any individual on the basis of disability in the full and equal enjoyment of specified transportation services. This obligation includes, with respect to the provision of transportation services, compliance with the requirements of the rules of the Department of Justice concerning eligibility criteria, making reasonable modifications, providing auxiliary aids and services, and removing barriers (28 CFR 36.301-36.306).
- (2) **Private entity-public transport.** Private entities that provide specified public transportation shall make reasonable modifications in policies, practices, or procedures, when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations.
- (3) **Public entity-public transport.** Public entities that provide designated public transportation shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability or to provide program accessibility to their services, subject to the limitations of § 37.169(c)(1)-(3). This requirement applies to the means public entities use to meet their obligations under all provisions of this part.



- (4) In choosing among alternatives for meeting nondiscrimination and accessibility requirements with respect to new, altered, or existing facilities, or designated or specified transportation services, public and private entities shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate to the needs of individuals with disabilities.

*[56 FR 45621, Sept. 6, 1991, as amended at 80 FR 13260, Mar. 13, 2015]*



**49 CFR Part 37.7**

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**§ 37.7 Standards for accessible vehicles.**

- (a) For purposes of this part, a vehicle shall be considered to be readily accessible to and usable by individuals with disabilities if it meets the requirements of this part and the standards set forth in [part 38 of this title](#).
- (b)
  - (1) For purposes of implementing the equivalent facilitation provision in [§ 38.2](#) of this subtitle, the following parties may submit to the Administrator of the applicable operating administration a request for a determination of equivalent facilitation:
    - (i) A public or private entity that provides transportation services and is subject to the provisions of subpart D or subpart E this part; or
    - (ii) The manufacturer of a vehicle or a vehicle component or subsystem to be used by such entity to comply with this part.
  - (2) The requesting party shall provide the following information with its request:
    - (i) Entity name, address, contact person and telephone;
    - (ii) Specific provision of [part 38 of this title](#) concerning which the entity is seeking a determination of equivalent facilitation.
    - (iii) [Reserved]
    - (iv) Alternative method of compliance, with demonstration of how the alternative meets or exceeds the level of accessibility or usability of the vehicle provided in [part 38 of this subtitle](#); and
    - (v) Documentation of the public participation used in developing an alternative method of compliance.
  - (3) In the case of a request by a public entity that provides transportation services subject to the provisions of [subpart D of this part](#), the required public participation shall include the following:
    - (i) The entity shall contact individuals with disabilities and groups representing them in the community. Consultation with these individuals and groups shall take place at all stages of the development of the request for equivalent facilitation. All documents and other information concerning the request shall be available, upon request, to members of the public.
    - (ii) The entity shall make its proposed request available for public comment before the request is made final or transmitted to DOT. In making the request available for public review, the entity shall ensure that it is available, upon request, in accessible formats.
    - (iii) The entity shall sponsor at least one public hearing on the request and shall provide adequate notice of the hearing, including advertisement in appropriate media, such as newspapers of general and special interest circulation and radio announcements.
  - (4) In the case of a request by a private entity that provides transportation services subject to the provisions of [subpart E of this part](#) or a manufacturer, the private entity or manufacturer shall consult, in person, in writing, or by other appropriate means, with representatives of national and local organizations representing people with those disabilities who would be affected by the request.
  - (5) A determination of compliance will be made by the Administrator of the concerned operating administration on a case-by-case basis, with the concurrence of the Assistant Secretary for Policy and International Affairs.

- (i) The entity shall contact individuals with disabilities and groups representing them in the community. Consultation with these individuals and groups shall take place at all stages of the development of the request for equivalent facilitation. All documents and other information concerning the request shall be available, upon request, to members of the public.
- (ii) The entity shall make its proposed request available for public comment before the request is made final or transmitted to DOT. In making the request available for public review, the entity shall ensure that it is available, upon request, in accessible formats.
- (iii) The entity shall sponsor at least one public hearing on the request and shall provide adequate notice of the hearing, including advertisement in appropriate media, such as newspapers of general and special interest circulation and radio announcements.
- (4) In the case of a request by a private entity that provides transportation services subject to the provisions of [subpart E of this part](#) or a manufacturer, the private entity or manufacturer shall consult, in person, in writing, or by other appropriate means, with representatives of national and local organizations representing people with those disabilities who would be affected by the request.
- (5) A determination of compliance will be made by the Administrator of the concerned operating administration on a case-by-case basis, with the concurrence of the Assistant Secretary for Policy and International Affairs.



(6) Determinations of equivalent facilitation are made only with respect to vehicles or vehicle components used in the provision of transportation services covered by subpart D or [subpart E of this part](#), and pertain only to the specific situation concerning which the determination is made. Entities shall not cite these determinations as indicating that a product or method constitute equivalent facilitations in situations other than those to which the determinations specifically pertain. Entities shall not claim that a determination of equivalent facilitation indicates approval or endorsement of any product or method by the Federal government, the Department of Transportation, or any of its operating administrations.

(c) Over-the-road buses acquired by public entities (or by a contractor to a public entity as provided in [§ 37.23 of this part](#)) shall comply with [§ 38.23](#) and [subpart G of part 38 of this title](#).

*[56 FR 45621, Sept. 6, 1991, as amended at 58 FR 63101, Nov. 30, 1993; 61 FR 25416, May 21, 1996]*

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**§ 37.23 Service under contract.**

- (a) When a public entity enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to operate fixed route or demand responsive service, the public entity shall ensure that the private entity meets the requirements of this part that would apply to the public entity if the public entity itself provided the service.
- (b) A private entity which purchases or leases new, used, or remanufactured vehicles, or remanufactures vehicles, for use, or in contemplation of use, in fixed route or demand responsive service under contract or other arrangement or relationship with a public entity, shall acquire accessible vehicles in all situations in which the public entity itself would be required to do so by this part.
- (c) A public entity which enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to provide fixed route service shall ensure that the percentage of accessible vehicles operated by the public entity in its overall fixed route or demand responsive fleet is not diminished as a result.
- (d) A private entity that provides fixed route or demand responsive transportation service under contract or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) with another private entity shall be governed, for purposes of the transportation service involved, by the provisions of this part applicable to the other entity.

*[56 FR 45621, Sept. 6, 1991, as amended at 76 FR 57935, Sept. 19, 2011]*

**49 CFR Part 37.33**

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**§ 37.33 Airport transportation systems.**

- (a) Transportation systems operated by public airport operators, which provide designated public transportation and connect parking lots and terminals or provide transportation among terminals, are subject to the requirements of this part for fixed route or demand responsive systems, as applicable, operated by public entities. Public airports which operate fixed route transportation systems are subject to the requirements of this part for commuter bus service operated by public entities. The provision by an airport of additional accommodations (e.g., parking spaces in a close-in lot) is not a substitute for meeting the requirements of this part.
- (b) Fixed-route transportation systems operated by public airport operators between the airport and a limited number of destinations in the area it serves are subject to the provisions of this part for commuter bus systems operated by public entities.
- (c) Private jitney or shuttle services that provide transportation between an airport and destinations in the area it serves in a route-deviation or other variable mode are subject to the requirements of this part for private entities primarily engaged in the business of transporting people which provide demand responsive service. They may meet equivalency requirements by such means as sharing or pooling accessible vehicles among operators, in a way that ensures the provision of equivalent service.

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### **§ 37.129 Types of service.**



- (a) Except as provided in this section, complementary paratransit service for ADA paratransit eligible persons shall be origin-to-destination service.
- (b) Complementary paratransit service for ADA paratransit eligible persons described in § 37.123(e)(2) of this part may also be provided by on-call bus service or paratransit feeder service to an accessible fixed route, where such service enables the individual to use the fixed route bus system for his or her trip.
- (c) Complementary paratransit service for ADA eligible persons described in § 37.123(e)(3) of this part also may be provided by paratransit feeder service to and/or from an accessible fixed route.

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**§ 37.131 Service criteria for complementary paratransit.**

The following service criteria apply to complementary paratransit required by § 37.121 of this part.

(a) **Service Area -**

(1) **Bus.**

(i) The entity shall provide complementary paratransit service to origins and destinations within corridors with a width of three-fourths of a mile on each side of each fixed route. The corridor shall include an area with a three-fourths of a mile radius at the ends of each fixed route.

(ii) Within the core service area, the entity also shall provide service to small areas not inside any of the corridors but which are surrounded by corridors.

(iii) Outside the core service area, the entity may designate corridors with widths from three-fourths of a mile up to one and one half miles on each side of a fixed route, based on local circumstances.

(iv) For purposes of this paragraph, the core service area is that area in which corridors with a width of three-fourths of a mile on each side of each fixed route merge together such that, with few and small exceptions, all origins and destinations within the area would be served.

(2) **Rail.**

(i) For rail systems, the service area shall consist of a circle with a radius of  $\frac{3}{4}$  of a mile around each station.

(ii) At end stations and other stations in outlying areas, the entity may designate circles with radii of up to  $1\frac{1}{2}$  miles as part of its service area, based on local circumstances.

(3) **Jurisdictional boundaries.** Notwithstanding any other provision of this paragraph, an entity is not required to provide paratransit service in an area outside the boundaries of the jurisdiction(s) in which it operates, if the entity does not have legal authority to operate in that area. The entity shall take all practicable steps to provide paratransit service to any part of its service area.

(b) **Response time.** The entity shall schedule and provide paratransit service to any ADA paratransit eligible person at any requested time on a particular day in response to a request for service made the previous day. Reservations may be taken by reservation agents or by mechanical means.


(1) The entity shall make reservation service available during at least all normal business hours of the entity's administrative offices, as well as during times, comparable to normal business hours, on a day when the entity's offices are not open before a service day.

(2) The entity may negotiate pickup times with the individual, but the entity shall not require an ADA paratransit eligible individual to schedule a trip to begin more than one hour before or after the individual's desired departure time.

(3) The entity may use real-time scheduling in providing complementary paratransit service.

(4) The entity may permit advance reservations to be made up to 14 days in advance of an ADA paratransit eligible individual's desired trips. When an entity proposes to change its reservations system, it shall comply with the public participation requirements equivalent to those of § 37.137 (b) and (c).

(c) **Fares.** The fare for a trip charged to an ADA paratransit eligible user of the complementary paratransit service shall not exceed twice the fare that would be charged to an individual paying full fare (i.e., without regard to discounts) for a trip of similar length, at a similar time of day, on the entity's fixed route system.



- (1) In calculating the full fare that would be paid by an individual using the fixed route system, the entity may include transfer and premium charges applicable to a trip of similar length, at a similar time of day, on the fixed route system.
- (2) The fares for individuals accompanying ADA paratransit eligible individuals, who are provided service under [§ 37.123 \(f\) of this part](#), shall be the same as for the ADA paratransit eligible individuals they are accompanying.
- (3) A personal care attendant shall not be charged for complementary paratransit service.
- (4) The entity may charge a fare higher than otherwise permitted by this paragraph to a social service agency or other organization for agency trips (*i.e.*, trips guaranteed to the organization).

- (d) **Trip purpose restrictions.** The entity shall not impose restrictions or priorities based on trip purpose.
- (e) **Hours and days of service.** The complementary paratransit service shall be available throughout the same hours and days as the entity's fixed route service.
- (f) **Capacity constraints.** The entity shall not limit the availability of complementary paratransit service to ADA paratransit eligible individuals by any of the following:
  - (1) Restrictions on the number of trips an individual will be provided;
  - (2) Waiting lists for access to the service; or
  - (3) Any operational pattern or practice that significantly limits the availability of service to ADA paratransit eligible persons.
    - (i) Such patterns or practices include, but are not limited to, the following:
      - (A) Substantial numbers of significantly untimely pickups for initial or return trips;
      - (B) Substantial numbers of trip denials or missed trips;
      - (C) Substantial numbers of trips with excessive trip lengths.
    - (ii) Operational problems attributable to causes beyond the control of the entity (including, but not limited to, weather or traffic conditions affecting all vehicular traffic that were not anticipated at the time a trip was scheduled) shall not be a basis for determining that such a pattern or practice exists.
- (g) **Additional service.** Public entities may provide complementary paratransit service to ADA paratransit eligible individuals exceeding that provided for in this section. However, only the cost of service provided for in this section may be considered in a public entity's request for an undue financial burden waiver under [§§ 37.151-37.155 of this part](#).

*[56 FR 45621, Sept. 6, 1991, as amended at 61 FR 25416, May 21, 1996; 71 FR 63266, Oct. 30, 2006]*

**49 CFR Part 37.163**

<https://www.ecfr.gov/current/title-49/subtitle-A/part-37/subpart-G/section-37.163>

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**§ 37.163 Keeping vehicle lifts in operative condition: Public entities.**

- (a) This section applies only to public entities with respect to lifts in non-rail vehicles.
- (b) The entity shall establish a system of regular and frequent maintenance checks of lifts sufficient to determine if they are operative.
- (c) The entity shall ensure that vehicle operators report to the entity, by the most immediate means available, any failure of a lift to operate in service.
- (d) Except as provided in paragraph (e) of this section, when a lift is discovered to be inoperative, the entity shall take the vehicle out of service before the beginning of the vehicle's next service day and ensure that the lift is repaired before the vehicle returns to service.
- (e) If there is no spare vehicle available to take the place of a vehicle with an inoperable lift, such that taking the vehicle out of service will reduce the transportation service the entity is able to provide, the public entity may keep the vehicle in service with an inoperable lift for no more than five days (if the entity serves an area of 50,000 or less population) or three days (if the entity serves an area of over 50,000 population) from the day on which the lift is discovered to be inoperative.
- (f) In any case in which a vehicle is operating on a fixed route with an inoperative lift, and the headway to the next accessible vehicle on the route exceeds 30 minutes, the entity shall promptly provide alternative transportation to individuals with disabilities who are unable to use the vehicle because its lift does not work.



**49 CFR Part 37.165**

<https://www.ecfr.gov/current/title-49/subtitle-A/part-37/subpart-G/section-37.165>

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**§ 37.165 Lift and securement use.**

- (a) This section applies to public and private entities.
- (b) Except as provided in this section, individuals using wheelchairs shall be transported in the entity's vehicles or other conveyances.
  - (1) With respect to wheelchair/occupant combinations that are larger or heavier than those to which the design standards for vehicles and equipment of [49 CFR part 38](#) refer, the entity must carry the wheelchair and occupant if the lift and vehicle can accommodate the wheelchair and occupant. The entity may decline to carry a wheelchair/occupant if the combined weight exceeds that of the lift specifications or if carriage of the wheelchair is demonstrated to be inconsistent with legitimate safety requirements.
  - (2) The entity is not required to permit wheelchairs to ride in places other than designated securement locations in the vehicle, where such locations exist.
- (c)
  - (1) For vehicles complying with [part 38 of this title](#), the entity shall use the securement system to secure wheelchairs as provided in that Part.
  - (2) For other vehicles transporting individuals who use wheelchairs, the entity shall provide and use a securement system to ensure that the wheelchair remains within the securement area.
  - (3) The entity may require that an individual permit his or her wheelchair to be secured.
- (d) The entity may not deny transportation to a wheelchair or its user on the ground that the device cannot be secured or restrained satisfactorily by the vehicle's securement system.
- (e) The entity may recommend to a user of a wheelchair that the individual transfer to a vehicle seat. The entity may not require the individual to transfer.
- (f) Where necessary or upon request, the entity's personnel shall assist individuals with disabilities with the use of securement systems, ramps and lifts. If it is necessary for the personnel to leave their seats to provide this assistance, they shall do so.



- (g) The entity shall permit individuals with disabilities who do not use wheelchairs, including standees, to use a vehicle's lift or ramp to enter the vehicle. *Provided*, that an entity is not required to permit such individuals to use a lift Model 141 manufactured by EEC, Inc. If the entity chooses not to allow such individuals to use such a lift, it shall clearly notify consumers of this fact by signage on the exterior of the vehicle (adjacent to and of equivalent size with the accessibility symbol).

[56 FR 45621, Sept. 6, 1991, as amended at 58 FR 63103, Nov. 30, 1993; 76 FR 57936, Sept. 19, 2011]

**49 CFR Part 37.167**

<https://www.ecfr.gov/current/title-49/subtitle-A/part-37/subpart-G/section-37.167>

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**§ 37.167 Other service requirements.**

- (a) This section applies to public and private entities.
- (b) On fixed route systems, the entity shall announce stops as follows:
  - (1) The entity shall announce at least at transfer points with other fixed routes, other major intersections and destination points, and intervals along a route sufficient to permit individuals with visual impairments or other disabilities to be oriented to their location.
  - (2) The entity shall announce any stop on request of an individual with a disability.
- (c) Where vehicles or other conveyances for more than one route serve the same stop, the entity shall provide a means by which an individual with a visual impairment or other disability can identify the proper vehicle to enter or be identified to the vehicle operator as a person seeking a ride on a particular route.
- (d) The entity shall permit service animals to accompany individuals with disabilities in vehicles and facilities.
- (e) The entity shall ensure that vehicle operators and other personnel make use of accessibility-related equipment or features required by [part 38 of this title](#).
- (f) The entity shall make available to individuals with disabilities adequate information concerning transportation services. This obligation includes making adequate communications capacity available, through accessible formats and technology, to enable users to obtain information and schedule service.
- (g) The entity shall not refuse to permit a passenger who uses a lift to disembark from a vehicle at any designated stop, unless the lift cannot be deployed, the lift will be damaged if it is deployed, or temporary conditions at the stop, not under the control of the entity, preclude the safe use of the stop by all passengers.
- (h) The entity shall not prohibit an individual with a disability from traveling with a respirator or portable oxygen supply, consistent with applicable Department of Transportation rules on the transportation of hazardous materials ([49 CFR subtitle B, chapter 1, subchapter C](#)).
- (i) The entity shall ensure that adequate time is provided to allow individuals with disabilities to complete boarding or disembarking from the vehicle.

- (j)
  - (1) When an individual with a disability enters a vehicle, and because of a disability, the individual needs to sit in a seat or occupy a wheelchair securement location, the entity shall ask the following persons to move in order to allow the individual with a disability to occupy the seat or securement location:
    - (i) Individuals, except other individuals with a disability or elderly persons, sitting in a location designated as priority seating for elderly and handicapped persons (or other seat as necessary);
    - (ii) Individuals sitting in or a fold-down or other movable seat in a wheelchair securement location.
  - (2) This requirement applies to light rail, rapid rail, and commuter rail systems only to the extent practicable.
  - (3) The entity is not required to enforce the request that other passengers move from priority seating areas or wheelchair securement locations.



- (4) In all signage designating priority seating areas for elderly persons and persons with disabilities, or designating wheelchair securement areas, the entity shall include language informing persons sitting in these locations that they should comply with requests by transit provider personnel to vacate their seats to make room for an individual with a disability. This requirement applies to all fixed route vehicles when they are acquired by the entity or to new or replacement signage in the entity's existing fixed route vehicles.

*[56 FR 45621, Sept. 6, 1991, as amended at 58 FR 63103, Nov. 30, 1993]*

**49 CFR Part 37.173**

<https://www.ecfr.gov/current/title-49/subtitle-A/part-37/subpart-G/section-37.173>

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**§ 37.173 Training requirements.**



Each public or private entity which operates a fixed route or demand responsive system shall ensure that personnel are trained to proficiency, as appropriate to their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities.



**APPENDIX 2**

**TITLE VI STAFF ASSIGNMENTS AND RESPONSIBILITIES**

**ASSIGNMENTS:**

**Grants - Regulatory Compliance SME**

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**Employment Practices SME**

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**Procurement SME**

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**Operating Administration SMEs**

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**Title VI Coordinator Responsibilities (28 CFR § 42.401):**

The Title VI Coordinator is responsible for initiating and monitoring activities for Title VI and related requirements, preparing required reports, and ensuring that Tucson Airport Authority meets other related responsibilities. This includes ensuring training is conducted, language interpretation and translation resources are available, and appropriate notices are posted. This also includes updating community statistics, and corresponding with the FAA, as necessary.

Among other responsibilities, the Title VI Coordinator:

- ❖ Provides oversight of the entire Title VI Program. This includes ensuring training is conducted, language translation services are available, and appropriate Title VI signage is posted. This also includes updating community statistics and corresponding with the FAA as necessary.
- ❖ Maintains and provides a copy of 49 CFR Part 21 for public inspection upon request in the administration office lobby during normal working hours, consistent with 49 CFR Part 21 Appendix C(b)(2)(i).
- ❖ Annually reviews TAA's Title VI Program and disseminates Title VI information, education materials, etc. and related requirements to Title VI Program liaisons.
- ❖ Maintains demographic data for protected bases for members of appointed planning and advisory bodies for the airport. Identifies any disparity between representation among the members and the airport beneficiaries and community, and provides the information to the membership selecting official/committee, particularly when vacancies occur.
- ❖ Receives, records, investigates, and forwards a copy of discrimination complaints covered by Title VI and related requirements to the FAA within 15 days of receipt. (See **Appendix 7** for complaint procedures) 49 CFR Parts 13, 16, 21
- ❖ Provides the FAA with an explanation of resolution attempts regarding complaints concerning Title VI and related requirements, consistent with 49 CFR Part 21, Appendix C(b)(3).
- ❖ Maintains file of complaint records for a minimum of 1 year, with a summary of each complaint kept for a minimum of 5 years (28 CFR § 35.107; 49 CFR § 27.13, 27.121)
- ❖ Responds to requests by FAA for data and records to determine compliance with Title VI and related requirements.
- ❖ Coordinates with Title VI Program liaisons to collect demographic data for protected bases, showing the extent to which minority groups are beneficiaries of or impacted by airport programs are regularly assessed and readily available, consistent with 49 CFR Part 21 §21.9 (b) & (c). Data collection methods will include optional demographic questions in surveys of airport guests for customers satisfaction, customer complaints, airport event sign-in sheets, and

bidders/proposers for airport contracts, and other methods described in the airport CPP. Identifies any disparities or underrepresentation among airport program beneficiaries.

- ❖ Posts and maintains Title VI “Unlawful Discrimination” posters in airport terminal, FBOs, and concessions locations. (See **Appendix 9**) (49 CFR § 21.9(d))

**Program SME Responsibilities** (28 CFR § 42.401; 49 CFR Part 21.5(b)(7):

**Grants - Regulatory Compliance SME**

- ❖ Prior to or upon application for any grant, including grants for the purchase of land or an airport or noise implementation project involving construction, will execute the complete standard DOT assurances for Title VI and related requirements applicable to the grant in the form prescribed by the FAA (See **Appendix 5**) 49 CFR § 21.7 (a)(1)(2), 49 CFR Part 21 Appendix C (b)(1)(2)
- ❖ Complete the “Title VI Pre-Award Sponsor Checklist” (See **Appendix 3**) as part of the grant application package for projects that meet specific criteria. (As noted in 28 CFR § 42.406(d); 49 CFR Part 21 Appendix C(b)(3))

**ADA/Sec 504 Coordinator:**

- ❖ Ensure ADA compliance for all airport and tenant project facility structural and/or equipment changes, upgrades, etc. (28 CFR § 35.105, 49 CFR 27.11; 1991 ADAAS 4.1.3(17); 4.31 4.12. 4.1.3, 4.1.6, 4.2, 4.3, 4.4, 4.5, 4.6.6, 4.7, 4.8, 4.10, 4.13, 4.14, 4.15, 4.16, 4.17, 4.19, 4.22, 4.23)
- ❖ Maintain “Evacuating Individuals w/ Disabilities” section in Emergency Management Plan(s) (28 CFR § 35.107, 49 CFR 27.13; 1991 ADAAS 4.28, 4.33.3; A4.3; A4.28)
- ❖ Ensure compliance of all existing airport Mapping/Wayfinding/Limited English Proficiency (LEP) signage. Symbols, etc. and conduct a review annually for continued compliance (Executive Order 13116, 28 CFR § 35.160; 28 CFR Part 36, 49 CFR § 27.71; 28 CFR § 35.107; 49 CFR § 27.13, 27.121, 1991 ADA Standards for Accessible Design (ADAAS) 4.1.2(7); 4.1.3; 4.6.4; 4.30.7; A4.30)
- ❖ Conduct annual sensitivity training to all TAA staff/concessionaires/tenants

**Employment Practices SME:**

- ❖ Provide translation of employee/employment information for Limited English Proficiency (LEP) individuals (Executive Order 13166)
- ❖ Conduct an annual survey and maintain a database of languages spoken By TAA staff (Executive Order 13166)
- ❖ As part of new employee sensitivity training, cover the prohibition of discriminatory acts among TAA staff and ensure refresher information is provided annually
- ❖ Ensure inclusion of Title VI provisions/updates in the TAA Employee Handbook

**Planning and Engineering SME:**

- ❖ Incorporate Title VI provisions in land transfers of Federally funded land (49 CFR Sub A Part 21 (a)(2))
- ❖ Review Title VI contract language requirements at each pre-construction/project kickoff meeting (28 CFR § 27.7; 28 CFR § 35.130)
- ❖ Ensure Title VI discrimination complaint posters are posted at each worksite (See **Appendix 9**) 49 CFR Part 21 Appendix C(b)(2)(ii) and 28 CFR 42.405(c)

- ❖ Verify airport noise/construction/other adverse human health & environmental effects are mitigated prior to starting projects (Environmental Justice) Executive Order 12898; DOT Order 5610.2A (77 FR 27534)
- ❖ Ensure public meetings regarding projects must have availability of Limited English Proficiency (LEP) and ADA Services (Translation and/or Sign Language) (Executive Order 13166)
- ❖ Prepare and conduct outreach plan regarding Environmental Justice (EJ) for low income and minority communities (Executive Order 12898; DOT Order 5610.2A (77 FR 27534))

**Maintenance and Custodial Services SME:**

- ❖ Conduct bi-annual facility ADA compliance review/inspection to ensure existing ADA features are in maintained in compliance (28 CFR § 35.105; 49 CFR § 27.11)
- ❖ Ensure ADA compliance of any maintenance/repairs done to existing features in facilities (49 CFR § 47123 A5.3.1)

**Procurement SME:**

- ❖ Include (not by reference) nondiscrimination language for each TAA procurement agreement (49 USC § 47123)
- ❖ Verify contract language flow down to subcontractors (all tiers) (49 CFR § 21.7; 49 CFR Part 21 Appendix C(b))
- ❖ Assure that the minority business community in the area is advised of the opportunities offered by airport concessions, and that bids are solicited from such qualified minority firms, and awards made without regard to race, color, or national origin (49 CFR Part 21 Appendix C(a)(1)(x))
- ❖ Ensure all contracts, leases, deeds, licenses, permits or other similar instruments, contain the contractual requirements and clauses (See **Appendix 6**) (49 CFR § 21.7; 49 CFR § 35.130)
- ❖ Maintain records pertinent to a Federal award (and all sponsor contracts/subcontracts) for a period of three years from submission of final closure documents (2 CFR § 200.333)

**Properties/Leases SME:**

- ❖ Conduct annual Title VI compliance training with tenants (28 CFR § 35.130(b)(7); 49 CFR § 27.7(e))
- ❖ Ensure nondiscrimination language is included in each TAA lease agreement (28 CFR § 27.7; 28 CFR § 35.130)
- ❖ Ensure “I Speak” checklist availability to Airlines/Concessions/Information Center/Volunteers (Executive Order 13166)
- ❖ Conduct annual ADA compliance certification for all ground transportation vehicles operating at airport (hotels, limos, etc.) and maintain list of certifications (28 CFR § 35.105; 49 CFR § 27.11)
- ❖ Ensure all contracts, leases (including air carriers), deeds, licenses, permits or other similar instruments, contain the contractual requirements and clauses (See **Appendix 6**) (28 CFR § 27.7; 28 CFR § 35.130) (49 CFR § 27.72; 14 CFR § 382.99)
- ❖ Ensure appropriate assistance and equipment for boarding aircraft, including jet bridges that are not overly steep and sufficient level space to transfer between wheelchairs and aisle chairs (49 CFR § 27.72; 14 CFR § 382; AC 150/5220-21C Chapter 2)

**Public Information SME:**

- ❖ Post, Update, and Maintain Title VI ADA/Section 504 Information on TAA Website (Complaint Form and Procedures, Updates to Federal Code, As Applicable) 28 CFR § 35.107, 49 CFR 27.13, 27.121

- ❖ Ensure All TAA Information/Documents/Advertisements have Translation Capabilities (Executive Order 13116)
- ❖ Ensure all published public information materials (notifications, posters, brochures, website) include notice of no discrimination on the basis of disability (28 CFR § 35.106, 49 CFR § 27.15)
- ❖ Social Media Complaints – Direct Individuals to Submit a Formal Complaint (28 CFR § 35.107, 49 CFR 27.13, 27.121)
- ❖ Conduct an annual survey of tenants of languages encountered/needs for translation services (Executive Order 13116)
- ❖ Ensure that required notice of public hearings and opportunities to comment on proposed airport actions reach all segments of the impacted community, and contacts leaders directly in affected communities to solicit their participation (28 CFR § 42.405(d))
- ❖ Advertise public notices in appropriate languages when a significant number or proportion of the affected community has Limited English Proficiency (LEP). Such notices will include direction for obtaining an interpreter free of charge for the public hearing (28 CFR § 42.405(d))
- ❖ Maintain records of all public notices and the efforts made to reach the affected community (28 CFR § 42.405(d), 49 CFR § 21.9 (b), 2 CFR § 200.333)

**Public Safety SMEs:**

- ❖ Ensure Emergency Management Plan includes evacuation procedures for disabled and Limited English Proficiency (LEP) individuals (Executive Order 13116; 1991 ADAAS 4.28, 4.33.3; A4.3; A4.28)
- ❖ Ensure TAA first responders are trained in handling disabled or Limited English Proficiency (LEP) individuals requiring attention (Executive Order 13116)

**Airport Communications Center (ACC) SME:**

- ❖ Ensure availability of language translation of Limited English Proficiency (LEP) phone communication (Executive Order 13116)
- ❖ Track and maintain count of languages other than English spoken by callers (Executive Order 13116)

**Operating Administration SMEs:**

- ❖ Fully consider environmental justice principles throughout planning and decision-making processes in the development of programs, policies, and activities that address or affect infrastructure planning and decision-making; social, economic, or environmental matters; public health; and public involvement (See **Appendix 12**) 5610.2A (77 FR 27534), Executive Order 12898

**APPENDIX 3**

**TITLE VI PRE-AWARD SPONSOR CHECKLIST**

## FAA Title VI Pre-Grant Award Checklist

**INSTRUCTIONS:** This Checklist must be completed and submitted by the sponsor as a part of each FAA grant application. The Checklist is designed to assist the Airport Sponsor in establishing a compliant Title VI program. Note that this Checklist is intended to address some, but not all of the requirements under applicable civil rights laws and regulations. The Airport Sponsor should review the applicable laws and regulations carefully to obtain complete information about compliance requirements. "YES" responses mean that the sponsor is representing that it is in compliance or has a corrective action plan approved by the FAA Office of Civil Rights (FAA) to come into compliance. **"NO" responses mean there is a potential compliance issue. Compliance issues will be brought to the attention of the FAA to determine if corrective actions are necessary.** Electronic format is preferred. If there are any questions, please contact ACR-4-TitleVI@faa.gov.

\*References to "Title VI" in this checklist include Title VI of the Civil Rights Act of 1964 and related authorities that expand or clarify nondiscrimination protections in FAA assisted programs, identified in FAA Order 1400.11.

SECTION 1				
	<p><b>Overall:</b> By selecting "YES," the sponsor certifies that the following documents were provided to, and approved by, the FAA Office of Civil Rights, and documentation of FAA's approval has been received by the sponsor. The FAA Office reviewing this grant application will confirm the FAA's approval of the documents in this Section prior to approving the grant application.</p>	<p><b>Overall note:</b> A sponsor that has <u>both</u> a Title VI* Plan and a Community Participation Plan, <u>both</u> of which are approved by the FAA and current, has already received approval for the information outlined in this Checklist, and the sponsor does not need to complete the remaining questions in Sections 2 and 3 of this Checklist. This information is required based on DOT Order 1000.12C, Ch. II, Secs. 3 and 4.</p>		

SECTION 1 - Questions Concerning Prior Approval of Title VI Program		SECTION 1 Notes	YES	NO	COMMENTS
1.1	The sponsor has a written Title VI Plan, approved by the FAA Office of Civil Rights and subsequently adopted by the sponsor, and documentation of the approval and adoption.	Sponsors that receive formula or continuing federal financial assistance must develop, adopt, and implement a Title VI Plan that outlines the sponsor's measures to ensure compliance with Title VI. A current Title VI Plan on file with the FAA is sufficient if the Plan is no more than 3 years old as long as it is consistent with Chapter II, Section 2 of the DOT 2021 order, covering the sponsor's understanding of community engagement, language access, and disparate impact analysis. If the sponsor does not have an approved Title VI Plan, select "NO" and complete Sections 2 and 3 of this Checklist.			
1.2	The sponsor has a written Community Participation Plan (CPP), or an equivalent public participation plan (PPP), and documented approval or concurrence of the plan from the FAA Office of Civil Rights.	Sponsors must satisfy CPP requirements as a condition of receiving an award of federal financial assistance. To the extent the sponsor has already prepared a PPP as part of planning or other requirements of FAA or DOT, that plan or plans may satisfy the CPP requirement so long as the plan has incorporated the Title VI requirements as provided in DOT Order 1000.12C, Ch. II, Sec. 4(a-j). If the sponsor does not have an approved CPP or PPP, select "NO" and answer question 3.5 in Section 3 of this Checklist.			

**If the answers to 1.1 and 1.2 are both YES, the following Sections 2 and 3 do NOT need to be completed.**

SECTION 2				
	<p><b>Overall:</b> By selecting "YES," the sponsor certifies that the following documents have been collected in its records prior to submitting this grant application and will be timely made available to FAA staff, including from the FAA Offices of Airports, Chief Counsel, and Civil Rights, upon request.</p>	<p><b>Overall note:</b> "Timely available" usually means within 1 week or less, depending on the scope and circumstances. The data should already be available in a format that can be forwarded, as-is. No further data collection or summarization efforts should be necessary in order to respond to the request. This information is required by DOT Order 1000.12C, Ch. II, Sec. 2; 49 CFR 21.9; and FAA Order 1400.11.</p>		

SECTION 2 - Questions Concerning Applicant Data		SECTION 2 Notes	YES	NO	COMMENTS
2.1	The sponsor has, on file, demographic information for the surrounding community and communities otherwise affected by the sponsor's facilities and operations, including any airport noise and relocations?	At a minimum, data is required for race, color, national origin, and limited English proficiency (LEP) populations. The collected data must include the most current U.S. Census Bureau data, where available, such as American Community Survey data. Also, EJScreen at <a href="http://www.epa.gov/ejscreen">www.epa.gov/ejscreen</a> is a useful resource for assessing project areas.			
2.2	The sponsor has, on file, demographic information for beneficiaries? For example, if the applicant is an airport operator, it has collected information for its airport customers, as well as communities that are adjacent to the airport or in the landing and take off paths.	In most cases, this type of information is available through voluntary disclosures by customers, lessees, community meeting attendees, and businesses seeking opportunities with the applicant. If not applicable or after reasonable efforts, no information was collected, respond, "YES."			
2.3	The sponsor has, on file, demographic information for its staff?	In most cases, this type of information is available through voluntary disclosures. See also 49 CFR § 21.5(c). If not applicable or after reasonable efforts, no information was collected, respond, "YES."			
2.4	The sponsor has, on file, demographic information for individuals who are members of planning or advisory boards overseeing the applicant's programs, including its airport operations (if applicable).	Airport sponsors, the most common FAA grant applicants, commonly have appointed boards or are overseen directly by elected bodies, such as city councils. In addition, input for specific projects or sponsor priorities is often provided by standing appointed committees. If not already available, the information can be requested on a voluntary basis. If not applicable or after reasonable efforts, no information was collected, respond, "YES."			

SECTION 3					
<b>Overall:</b> By selecting "YES," the sponsor certifies that the following statements are true.		<b>Overall note:</b> This information is required by DOT Order 1000.12C, Ch. II, Secs. 2, 3, and 4.			

SECTION 3 - Questions about the Sponsor's Programs		SECTION 3 Notes	YES	NO	COMMENTS
3.1	The sponsor's programs, including any airport operations, have been evaluated for potential impact on the basis of race, color, national origin (including limited English proficiency (LEP)), or low income status as part of an environmental review process consistent with FAA requirements.	Relevant requirements include Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.) ("Title VI"), DOT's Title VI regulations at 49 CFR part 21, Executive Order 12898, and DOT Order on Environmental Justice (Order 5610.2C). See <a href="http://www.justice.gov/crt/fcs/TitleVI">www.justice.gov/crt/fcs/TitleVI</a> ; <a href="http://www.ecfr.gov">www.ecfr.gov</a> ; <a href="http://www.transportation.gov/transportation-policy/environmental-justice">www.transportation.gov/transportation-policy/environmental-justice</a> .			
3.2	The sponsor has a method to evaluate projects. See Checklist Section 2 data to identify any potential disparities on the basis of race, color, or national origin (including LEP), as part of an analysis to identify potential discriminatory effects, consistent with FAA requirements. For any identified disparities, plans and procedures and resources have been specifically identified, and the sponsor is in the process of addressing, mitigating, and avoiding the disparities, to the extent possible. Full related documentation is readily available for how the disparity is being addressed.	Relevant requirements include Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.) ("Title VI"), DOT's Title VI regulations at 49 CFR part 21, Executive Order 12898, and DOT Order on Environmental Justice (Order 5610.2C).			
3.3	The sponsor has performed a "Four-Factor" LEP analysis for the sponsor's programs, including its airport operations (if applicable). Plans and procedures and resources are in place to meet the identified LEP needs, consistent with the analysis.	A "Yes" response means yes to both parts of the question. The LEP analysis must be consistent with Executive Order 13166 and DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons (70 FR 74087, December 14, 2005). See <a href="https://www.transportation.gov/civil-rights/civil-rights-awareness-enforcement/dots-lep-guidance">https://www.transportation.gov/civil-rights/civil-rights-awareness-enforcement/dots-lep-guidance</a> .			

3.4	If the sponsor is an airport sponsor, the FAA Unlawful Discrimination Poster is displayed at its public airport facilities. If the sponsor is not an airport sponsor, it uses other effective methods to inform its customers, clients, beneficiaries, etc., that it will not discriminate on the basis of race, color, national origin (including LEP), age, sex (including sexual orientation and gender identity), or creed, and of how to file a complaint of discrimination under Title VI against the applicant.	For airport sponsors, areas where the posters should be displayed include, as applicable, airport terminals, fixed base operator facilities, and at businesses that are open to the public and operating on airport property, such as hotels. For larger facilities, posters should be placed so that people can reasonably be expected to see them, no matter where they are in the facility. The poster is available at <a href="https://www.faa.gov/about/office_org/headquarters_offices/acr/com_civ_support/national_airport_policy_compliance/">https://www.faa.gov/about/office_org/headquarters_offices/acr/com_civ_support/national_airport_policy_compliance/</a> . If applicant is not an airport, the method used to inform the public must be ongoing and documented.			
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3.5	The sponsor's practices for obtaining proactive and meaningful public participation to ensure that (1) beneficiaries, as well as contractors and sub-recipients (if applicable), are adequately informed about how programs, projects, and other activities will potentially affect them, and (2) diverse views are heard and considered throughout all stages of consultation, planning, and decision-making processes.	To demonstrate compliance with Title VI, the sponsor must specifically be able to show how it affords all members of the community equal opportunity to provide input, regardless of race, color, national origin (including LEP), sex (including sexual orientation and gender identity), creed, or age, in accordance with Title VI, 49 U.S.C. § 47123, Executive Orders 12898 and 13166, DOT Order 5610.2C, and the DOT LEP guidance at 70 FR 74087. Please skip this question if the sponsor has an FAA-approved community participation plan.			
3.6	Detailed information for all of the sponsor's Title VI lawsuits, investigations, and complaints filed or pending within the last 2 years has been uploaded to the FAA Civil Rights Connect System or sent to ACR-4-TitleVI@faa.gov, with receipt acknowledged.	Sponsors must provide the FAA with both the initial notifications for the individual lawsuits, investigation, and complaints, and status updates. The updates are required until at least the time of grant closeout. The updates must include at least the outcome of the lawsuits, investigation, and complaint, and confirmation for resolution of identified deficiencies. See Appendix C to 49 CFR 21, Sub-part (b)(3), available through www.ecfr.gov. "Title VI lawsuits, investigations, and complaints" include those alleging discrimination on the basis of race, color, national origin (including LEP), sex (including sexual orientation and gender identity), creed or age.			
3.7	Detailed information for all Title VI oversight activities (including audits, compliance reviews, and assessments for the sponsor) performed or pending within the last 2 years, has been sent to ACR-4-TitleVI@faa.gov, with receipt acknowledged. This requirement applies to oversight activities by other DOT offices and operating administrations, as well as by other federal agencies.	Sponsors must provide the FAA with both the initial notifications for the individual audits, compliance reviews, and assessment, and status updates. The updates are required until at least the time of grant closeout. The updates must include at least the outcome of the audits, compliance reviews, and assessment, and confirmation for resolution of identified deficiencies. See Appendix C to 49 CFR 21, Sub-part (b)(3).			
3.8	Detailed information for any pending grant applications with Federal agencies other than FAA are identified in the grant application.	The information should be included in narrative fields of the pending application.			



[https://www.faa.gov/sites/faa.gov/files/airports/northwest\\_mountain/sponsor\\_guide/aip-application-instructions.pdf](https://www.faa.gov/sites/faa.gov/files/airports/northwest_mountain/sponsor_guide/aip-application-instructions.pdf)

## Airport Improvement Program (AIP)

### Application Instructions

1. The project application for a development project consists of the following forms and documents. Do not include the instruction pages when submitting an application.
  - a. Form 424, Application for Federal Assistance. (page 1)
  - b. Form 5100-100 Part II, Project Approval Information, Section A. (page 2)
  - c. Form 5100-100 Part II - Section C. (page 3a)
  - d. Form 5100-100 Part II - Section C continued. (page 3b)
  - e. Form 5100-100 Part III, Budget Information, Sections A and B. (page 4)
  - f. Form 5100-100 Part III, Budget Information, Sections C, D, and F. (page 5)
  - g. Program Narrative: Provide a description of the work to be accomplished under the project, giving a justification for each item and describing the procedures intended to accomplish each item.
  - h. Project Cost Estimate: Provide cost estimates (preferably based on bids) for each major item of work, i.e. runway, taxiway, apron, runway lighting, taxiway lighting, fencing, etc. The estimate for each major work item should include the administrative and engineering fees.
  - i. Airport Sponsor Assurances
  - j. Project Sketch clearly identifying major work items.
  - k. Exhibit "A" Property Map (may be referenced on page 5 under Section E. Remarks, if no new land acquisition is involved with project).
  - l. Standard DOT Title VI Assurance (may be referenced on page 5 under Section E. Remarks, if included in a previous grant).
  - m. Plans and Specifications (should be referenced on page 5 under Section E. Remarks).
  - n. Current listing of FAA Advisory Circulars for AIP/PFC Projects
  - o. Sponsor Certification for Drug-Free Workplace.
  - p. Title VI Pre-award Sponsor Checklist (required if the project includes an Environmental Assessment (EA) or Impact Statement (EIS); airport or runway relocation; major runway extension; relocation of any structure or person; impact to access; preservation of any burial ceremonial or other sacred or historical structures or lands of any indigenous or ethnic population.
  
2. The project application for a planning project consists of the following forms and documents. Do not include the instruction pages when submitting an application.
  - a. Form 424, Application for Federal Assistance. (page 1)
  - b. Form 5100-100 Part II, Project Approval Information, Section A. (page 2)
  - c. Form 5100-101 Part III, Budget Information, Sections A and B. (page 3)
  - d. Form 5100-101 Part III, Budget Information, Sections C, D, E and F. (page 4)
  - e. Part IV-Program Narrative (Work Scope) with schedule.
  - f. Project Cost Estimate or negotiated cost.
  - g. Standard DOT Title VI Assurance (may be referenced).
  - h. Airport Sponsor Assurances
  - i. Sponsor Certification for Drug-Free Workplace.
  - j. Title VI Pre-award Sponsor Checklist (if it meets the requirements of item 1.o. above).
  
3. FAA Form 424. The catalog number (item 10.) for the Airport Improvement Program is 20-106.
  
4. FAA Form 5100-100, Part II-Section C, Item 1, page 3a, Compatible Land Use

Title 49 U.S.C. Section 47107(a)(10) states that the Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that appropriate action,

including the adoption of zoning laws, has been or will be taken, to the extent reasonable to restrict the use of land next to or near the airport to uses that are compatible with normal airport operations.

Part V, Assurances, provides this assurance for future action. In this section of the application, the sponsor should describe the past actions that have been taken to restrict the use of land adjacent to or in the vicinity of the airport to activities and purposes compatible with normal airport operations.

**Appendix 1, Advisory Circular 150/5020-1**, describes land uses normally compatible with various noise levels. Other incompatible uses include activities which produce smoke, electronics interference, or attract birds. While the responsibility for determining acceptable and permissible land uses falls upon local authorities, AIP legislation requires the appropriate action be taken by the sponsor to restrict the use of land in the vicinity of the airport to compatible uses.

As a result, many questions have arisen as to what actions constitute appropriate actions to satisfy the assurance.

Some types of appropriate actions include the following:

- a. Part 150 Airport Noise Compatibility Planning Program for the airport.
  - b. An off-airport land use plan as an element of a master plan project.
  - c. Actions taken to implement a previously adopted land use plan.
  - d. Zoning ordinances restricting not only the height of structures, but also restricting land use in affected areas to uses and activities compatible with airport operations.
  - e. Proposing and promoting such zoning ordinances by other political jurisdictions.
  - f. Encouraging legislation to provide zoning authority where no local government agency has such authority.
  - g. Urging authorized public agencies to undertake appropriate area planning studies.
  - h. Encouraging and attempting to persuade developers to develop areas adjacent to the airport for uses that are compatible with the airport. This will require sponsors to keep advised of proposals for public and private building construction in the vicinity of the airport.
  - i. Locating sponsor-owned or controlled compatible activities in areas adjacent to the airport.
5. FAA Form 5100-100, Part II-Section C, Item 4, page 3a, Land
- a. This section should be used to describe the property interest held in the existing airport. The declaration of property interest should be based upon a title opinion submitted by an attorney. The declaration of property interest held should be identified using the same parcel numbers as used to identify the property on the Exhibit "A".
  - b. This section is used only for those cases that construction work is included in the project on property that is not currently owned. In these cases the property interest to be acquired should be identified by parcel number corresponding to the Exhibit "A".
  - c. This section should be used to identify the property by parcel number that is being acquired under the project. If the property is currently owned and reimbursement is included in the project, the project should be identified in block (a) rather than in this block.
6. FAA Form 5100-100, Part III, Budget Information – Construction, page 4.
-

This section is used to show the funds needed to complete the project. The best estimates available should be shown for each classification of cost. **No funds should be shown on Line 18, Contingencies.**

7. Airport Sponsor Assurances

The assurances are submitted by the sponsor as part of the application for Federal assistance. The assurances are submitted by airport sponsors in applications requesting funds for airport development, airport planning, and noise compatibility projects.

8. Exhibit "A" Property Map

A current Exhibit "A" must be included with each application unless there has been no change in property limits since the last AIP project. If there has been no change, the previous Exhibit "A" must be incorporated by referenced. (Part III – Section E – Remarks). Information on land acquisition is available in AC 150/5100-17 "Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects."

9. DOT Title VI Assurances of the Civil Rights Act of 1964

Title VI states that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

**Beginning in October 1984, the first grant issued** to a sponsor to construct a facility (including runways, taxiways, aprons, etc.) or to purchase land must include the DOT Title VI Assurance, which includes clauses for contracts and subcontracts and requirements for deeds, licenses, leases, permits or similar instruments. Since the assurance under this condition is applicable for the time the airport is in existence, there is no requirement for a sponsor to execute a new Title VI Assurance, but the sponsor must incorporate it by reference in (Part III – Section E – Remarks) of a grant application.

10. Plans and Specifications

A copy of the plans and specifications are not required to be attached to the grant application. However, they should be incorporated by reference in (Part III – Section E – Remarks) of the grant application.

11. Drug Free Workplace Requirements

In accordance with the Drug-Free Workplace Act of 1988, 41 USC 702-706, grantees shall certify to the Federal Agency they will provide a drug free workplace. Provide a copy of the Sponsor Certification for Drug-Free Workplace.

12. FAA Form 5100-100, Part III – Budget Information – Construction, page 5 of grant application:

Section A – General: Include the Federal Domestic Assistance Catalog Number: **20-106**

Section E – Remarks: Provide the following statement as a minimum. If these items are attached to the grant application, simply state "attached" rather than using a calendar date.

"The following items are incorporated by reference:

- Plans and Specifications, dated \_\_\_\_\_
- Title VI Assurances, dated \_\_\_\_\_
- Exhibit "A" Property Map, dated \_\_\_\_\_"

13. FAA Form 5100-100, Part IV, Program Narrative, Page 5.

On a separate piece of paper, describe the work to be accomplished under the project, giving a justification for each item and describing the procedures intended to accomplish each item.

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**APPENDIX 4**

**PUBLIC TRANSPORTATION / ACCESSIBILITY**

Current public transportation providers can be found on TAA website at:

<https://www.flytucson.com/transportation/public-transit/>

## Public Transit

Two routes of Sun Tran, the region's public transit system, make regular stops at Tucson International Airport.

The bus stop for the airport is in front of the main terminal. Follow signs to ground transportation. Exit baggage claim and cross the roadway. The Sun Tran stop is to your right on the first island.



[suntran.com](http://suntran.com)  
(520) 792-9222

[Bus Tracker & Trip Planner](#)

(For current schedule and route information click on route number and name below.)

**Route 11 – Alvernon Way – North from the airport** travels along Palo Verde Road and Alvernon Way through mid-town to the Tucson Jewish Community Center near Dodge Boulevard and River Road. Departures from the airport are scheduled weekdays about every half hour 5:25 a.m.-5:55 p.m. and then hourly until 11 p.m. Saturday departures are hourly 5:35 a.m.-7:35 p.m. Sunday and holiday departures are hourly from 5:55 a.m.-6:55 p.m. Scheduled travel time between the airport and Broadway/Alvernon is 35 minutes and to Dodge/River is an hour. **South to the airport** make certain your bus is marked "Airport." Some Route 11 buses go to the Laos Transit Center instead.

**Route 25 – South Park Ave – North from the airport** travels to the Laos Transit Center, 205 W. Irvington Road, then continues on Park Avenue to Broadway into downtown Tucson. Weekday departures from the airport are every half-hour 4:10 a.m.-7:40 p.m. then hourly until 11:40 p.m. Saturday departures are hourly 5:40 a.m.-7:40 p.m. Sunday and holiday departures are hourly 6:25 a.m.-7:25 p.m. Scheduled travel time between the airport and the Laos Transit Center is about 25 minutes and to 6th Avenue and Pennington Street downtown is 40 minutes. **South to the airport** make certain your bus is marked "Airport." On Saturdays some Route 25 buses go only as far as the Laos Transit Center.

### Fares

Sun Tran is temporarily fare-free through December 31, 2022.

Regular cash fare is \$1.75. (Drivers do not have change for over payment.) Cash fare customers must pay fare for each leg of a trip. (Express and Shuttle routes have higher fares.) Visitors to Tucson who plan on using the Sun Tran system can save on fares by purchasing a SunGO card or ticket and having it mailed (allow 10 days for delivery). Regular fare using SunGO is \$1.60 and includes transfers at no additional charge. Learn more about SunGO [here](#).

## Accessibility

Assistance to Help With Challenges at TUS

At Tucson International Airport (TUS) we strive to make travel as low stress as possible for all travelers and that includes those who need additional assistance.

This page lists the accessibility services available in the terminal at TUS. In particular we want to point out the Tucson Airport Authority provides free access to Aira, which uses the video stream from a smartphone camera or smart glasses to connect to a live sighted agent who can help guide users through the terminal. (Read more about Aira below under Blind/Low Vision Assistance.) TDD services for the deaf are also available. (Read more below under Paging.)

Accessibility assistance is available 24/7 by dialing "0" from any courtesy phone in the terminal. TUS Warm Welcome Volunteers are also on duty during peak travel times and are happy to provide assistance.

Please direct questions concerning the Americans with Disabilities Act (ADA) and Section 504 requirements to the Tucson Airport Authority's ADA Coordinator. Contact information, along with the TAA's ADA Policy and Complaint procedure are at the bottom of this page, click [here](#).

## Airlines

Use the following links to get information about special assistance for airlines at TUS.

- [Alaska Airlines](#)
- [American Airlines](#)
- [Delta Air Lines](#)
- [Flair Airlines](#)
- [Southwest Airlines](#)
- [Sun Country Airlines](#)
- [United Airlines](#)

## Arriving/Departing TUS

Passengers departing Tucson may use the curbside in front of each airline at the terminal buildings to unload. The curbside includes wheelchair accessible cuts. All airlines provide curbside wheelchair assistance (use the airline links above for information on special assistance). For prompt service it's best to make arrangements in advance of arriving at the airport. This can often be done at the time you're booking your reservation. If wheelchair assistance isn't readily available when arriving at the airport, please notify an airline employee or TAA traffic officer.

Only active loading and unloading of passengers is permitted curbside. Federal security regulations prevent TAA traffic officers from allowing vehicles to park at the curbside in front of the terminal buildings. If you wish to park, please use the Hourly parking lot. Another option if you're picking up an arriving passenger is to wait with your vehicle in the free Cell Phone Waiting Lot off Airport Drive immediately west of the terminal area.

## Blind/Low Vision Assistance

Access to Aira (Artificial Intelligence Remote Assistance and pronounced EYE-rah) is available at no charge to users while at Tucson International Airport. Using the video stream from a smartphone camera or smart glasses, the service combines GPS, artificial intelligence and augmented reality, to connect blind and low vision travelers to live, sighted agents who can provide visual descriptions on demand to help navigate through the check-in process, TSA security, locate gates, find airport shops and restaurants, identify luggage and stay updated on flight status.

Download the free Aira app [here](#) or for more information call 1-800-835-1934.



## Elevators

All public elevators in the main terminal contain Braille, lowered control panels and foot-operated buttons, both inside and outside the elevators, to facilitate ease of use. There are eight elevators located throughout the public areas of the terminal facility. Five are in the main terminal, all within close proximity of escalators and/or stairs. Three are in the parking garage. All of the facilities at the C Gates are on the ground level.

## Emergency Services



For medical emergencies, trained TAA emergency medical technicians are available 24 hours. Dial 911 from any airport or cell phone for assistance.

## Ground Transportation

Accessible ground transportation services should be specifically requested when making a reservation. All ground transportation providers can be found on the commercial roadway in front of the main terminal. Information on taxis is [here](#), other car and shuttle services is [here](#) and Lyft and Uber is [here](#).

Sun Tran, the Tucson region's public transit system, is wheelchair accessible. The Sun Tran stop is also on the commercial roadway in front of the main terminal. Information about Sun Tran is [here](#).

## Moving Walkways

Moving walkways travel up an incline leading to/from the east exit of the main terminal connecting passengers with the Rental Car Center and the Parking Garage. Persons with disabilities may find it more convenient to avoid the moving sidewalks. To do so, arriving passengers at Baggage Claim can take an elevator to the second level then travel down the ramp from the terminal to the east exit. Departing passengers entering the terminal from the Rental Car Center or Parking Garage should stay to the left upon entering the terminal and take the ramp down to baggage claim then use an elevator to the second level for airline check-in. (Note that departing passengers using app ride services, taxis and shuttles, are dropped off curbside in front of each airline's check-in counter.)



## Parking

Designated reserved accessible parking spaces are available in the Hourly and Economy parking lots and in the Parking Garage. These spaces require official license plates bearing the disabled designation or other official documents issued by a municipality or state of residence to be prominently displayed on the vehicle while it is parked. **Please be aware there are no designated accessible parking spaces in the Daily lot.** As an alternative, properly identified vehicles may park in the designated spaces in the Hourly lot and cashiers at the exit will charge the Daily lot rate. The lowest parking rates are in the Economy parking lot at East Corona Road and South Tucson Boulevard which has shuttles that are wheelchair accessible. For additional information or to arrange for a wheelchair accessible shuttle, please call Ace Parking at (520) 573-4710.

## Rental Cars

Rental car companies provide special access vehicles. Reservations are required. Rental car counters and vehicles are in the Rental Car Center, just outside the east exit of the terminal. Car rental information is [here](#).

## Restrooms

All airport restrooms contain at least one larger stall and grab bars to accommodate individuals with accessibility needs. In addition to wheelchair accessible restroom facilities, there are family restrooms post-security on both the A and B concourses and three are pre-security: two adjacent to the Welcome Lounges in baggage claim on the lower level and one is on the east side of the Center Point on the ticketing (second) level.

## TSA Security Screening Assistance

Travelers who require special assistance going through the Transportation Security Administration checkpoints can request the service as part of making their airline reservation.



Federal security measures restrict public access beyond the checkpoints to ticketed passengers only. However, airlines may allow persons with special needs to be accompanied by assistants or guardians. These arrangements can be made at the airline check-in counter. Proper identification, including a government-issued photo identification card, is required.

TSA Cares is a hotline service operated by the TSA. Passengers requesting assistance should contact TSA Cares at 1-855-787-2227 at least 72 hours prior to their planned departure. (Federal Relay: 711) During Daylight Saving Time (March through October), the hotline is staffed from 5 a.m.-8 p.m. (Tucson time) Mondays through Fridays and from 6 a.m.-5 p.m. weekends and holidays. During Standard Time, it is staffed from 6 a.m.-9 p.m. Mondays through Fridays and 7 a.m.-6 p.m. weekends and holidays. Email them at [mail TSA Cares](mailto:TSA.Cares).

## Service Animal Relief Area

Animal relief areas are located outside the east and west sides of the Baggage Claim, lower level. Use the exit doors toward the parking lot nearest baggage carousels 1 and 7. Plastic bags and a container for disposal of solid waste are provided. In the secure area of the A and B concourses, animal relief areas can be found just beyond the TSA Checkpoints.

## Wheelchair Service

Passengers may request wheelchair assistance from their airline. Use the links to the airlines at the top of this page for information. Please be aware that all airlines have suspended curbside bag check for all customers.

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## ADA Coordinator

If you have a question concerning the Americans with Disabilities Act (ADA) and Section 504 requirements, you can reach the Tucson Airport Authority's ADA Coordinator by [email here](#) or call (520) 573-8100 during regular business hours, 8 a.m.-4:30 p.m. Mondays-Fridays, except holidays.

If you have a question about navigating the terminal, accessing Ground Transportation or anything generally related to Tucson International Airport (TUS), please use [this Contact Form](#) to reach our Public Information Administrator. You should have a response within 48 hours.



**APPENDIX 5**

**GRANT ASSURANCES**

49 CFR § 21.7 (a)(1), 49 CFR Part 21 Appendix C (b)

[https://www.faa.gov/airports/aip/grant\\_assurances/media/assurances-airport-sponsors-2022-05.pdf](https://www.faa.gov/airports/aip/grant_assurances/media/assurances-airport-sponsors-2022-05.pdf)



**FAA  
Airports**

## **ASSURANCES**

### **AIRPORT SPONSORS**

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#### **A. General.**

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this Grant Agreement.

#### **B. Duration and Applicability.**

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

The terms, conditions and assurances of this Grant Agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

The preceding paragraph (1) also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. **Airport Planning Undertaken by a Sponsor.**

Unless otherwise specified in this Grant Agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 23, 25, 30, 32, 33, 34, and 37 in Section C apply to planning projects. The terms, conditions, and

assurances of this Grant Agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport.

**C. Sponsor Certification.**

The sponsor hereby assures and certifies, with respect to this grant that:

**1. General Federal Requirements**

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Grant including but not limited to the following:

**FEDERAL LEGISLATION**

- a. 49 U.S.C. subtitle VII, as amended.
- b. Davis-Bacon Act, as amended — 40 U.S.C. §§ 3141-3144, 3146, and 3147, et seq.<sup>1</sup>
- c. Federal Fair Labor Standards Act — 29 U.S.C. § 201, et seq.
- d. Hatch Act — 5 U.S.C. § 1501, et seq.<sup>2</sup>
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601, et seq.<sup>1, 2</sup>
- f. National Historic Preservation Act of 1966 — Section 106 — 54 U.S.C. § 306108.<sup>1</sup>
- g. Archeological and Historic Preservation Act of 1974 — 54 U.S.C. § 312501, et seq.<sup>1</sup>
- h. Native Americans Grave Repatriation Act — 25 U.S.C. § 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended — 42 U.S.C. § 7401, et seq.
- j. Coastal Zone Management Act, P.L. 92-583, as amended — 16 U.S.C. § 1451, et seq.
- k. Flood Disaster Protection Act of 1973 — Section 102(a) - 42 U.S.C. § 4012a.<sup>1</sup>
- l. 49 U.S.C. § 303, (formerly known as Section 4(f)).
- m. Rehabilitation Act of 1973 — 29 U.S.C. § 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin).
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.) (prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 — 42 U.S.C. § 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968, as amended — 42 U.S.C. § 4151, et seq.<sup>1</sup>
- s. Powerplant and Industrial Fuel Use Act of 1978 — Section 403 — 42 U.S.C. § 8373.<sup>1</sup>
- t. Contract Work Hours and Safety Standards Act — 40 U.S.C. § 3701, et seq.<sup>1</sup>
- u. Copeland Anti-kickback Act — 18 U.S.C. § 874.<sup>1</sup>

- v. National Environmental Policy Act of 1969 – 42 U.S.C. § 4321, et seq.<sup>1</sup>
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. § 1271, et seq.
- x. Single Audit Act of 1984 – 31 U.S.C. § 7501, et seq.<sup>2</sup>
- y. Drug-Free Workplace Act of 1988 – 41 U.S.C. §§ 8101 through 8105.
- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (P.L. 109-282, as amended by section 6202 of P.L. 110-252).
- aa. Civil Rights Restoration Act of 1987, P.L. 100-259.
- bb. Build America, Buy America Act, P.L. 117-58, Title IX.

**EXECUTIVE ORDERS**

- a. Executive Order 11246 – Equal Employment Opportunity<sup>1</sup>
- b. Executive Order 11990 – Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs
- e. Executive Order 12699 – Seismic Safety of Federal and Federally Assisted New Building Construction<sup>1</sup>
- f. Executive Order 12898 – Environmental Justice
- g. Executive Order 13166 – Improving Access to Services for Persons with Limited English Proficiency
- h. Executive Order 13985 – Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- i. Executive Order 13988 – Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation
- j. Executive Order 14005 – Ensuring the Future is Made in all of America by All of America’s Workers
- k. Executive Order 14008 – Tackling the Climate Crisis at Home and Abroad

**FEDERAL REGULATIONS**

- a. 2 CFR Part 180 – OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. <sup>4,5</sup>
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment.
- d. 14 CFR Part 13 – Investigative and Enforcement Procedures.
- e. 14 CFR Part 16 – Rules of Practice for Federally-Assisted Airport Enforcement Proceedings.
- f. 14 CFR Part 150 – Airport Noise Compatibility Planning.

- g. 28 CFR Part 35 – Nondiscrimination on the Basis of Disability in State and Local Government Services.
- h. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for the Enforcement of Title VI of the Civil Rights Act of 1964.
- i. 29 CFR Part 1 – Procedures for Predetermination of Wage Rates.<sup>1</sup>
- j. 29 CFR Part 3 – Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States.<sup>1</sup>
- k. 29 CFR Part 5 – Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act).<sup>1</sup>
- l. 41 CFR Part 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally-assisted contracting requirements).<sup>1</sup>
- m. 49 CFR Part 20 – New Restrictions on Lobbying.
- n. 49 CFR Part 21 – Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 23 – Participation by Disadvantage Business Enterprise in Airport Concessions.
- p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs.<sup>1, 2</sup>
- q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.
- r. 49 CFR Part 27 – Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance.<sup>1</sup>
- s. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation.
- t. 49 CFR Part 30 – Denial of Public Works Contracts to Suppliers of Goods and Services of Countries That Deny Procurement Market Access to U.S. Contractors.
- u. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).
- v. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- w. 49 CFR Part 38 – Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles.
- x. 49 CFR Part 41 – Seismic Safety.

***FOOTNOTES TO ASSURANCE (C)(1)***

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<sup>1</sup> These laws do not apply to airport planning sponsors.

<sup>2</sup> These laws do not apply to private sponsors.

<sup>3</sup> 2 CFR Part 200 contains requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation shall

- apply where applicable to private sponsors receiving Federal assistance under Title 49, United States Code.
- 4 Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.
  - 5 Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

### **SPECIFIC ASSURANCES**

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Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this Grant Agreement.

#### **2. Responsibility and Authority of the Sponsor.**

a. Public Agency Sponsor:

It has legal authority to apply for this Grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this Grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this Grant Agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

#### **3. Sponsor Fund Availability.**

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this Grant Agreement which it will own or control.

#### **4. Good Title.**

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

#### **5. Preserving Rights and Powers.**

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this Grant Agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere

with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

- b. Subject to the FAA Act of 2018, Public Law 115-254, Section 163, it will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this Grant Agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this Grant Agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this Grant Agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with Title 49, United States Code, the regulations and the terms, conditions and assurances in this Grant Agreement and shall ensure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

**6. Consistency with Local Plans.**

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

**7. Consideration of Local Interest.**

It has given fair consideration to the interest of communities in or near where the project may be located.

**8. Consultation with Users.**

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

**9. Public Hearings.**

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

**10. Metropolitan Planning Organization.**

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

**11. Pavement Preventive Maintenance-Management.**

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

**12. Terminal Development Prerequisites.**

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under 49 U.S.C. § 44706, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

**13. Accounting System, Audit, and Record Keeping Requirements.**

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this Grant, the total cost of the project in connection with which this Grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The



accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.

- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this Grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this Grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

**14. Minimum Wage Rates.**

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this Grant Agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor under 40 U.S.C. §§ 3141-3144, 3146, and 3147, Public Building, Property, and Works), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

**15. Veteran's Preference.**

It shall include in all contracts for work on any project funded under this Grant Agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in 49 U.S.C. § 47112. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

**16. Conformity to Plans and Specifications.**

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this Grant Agreement, and, upon approval of the Secretary, shall be incorporated into this Grant Agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this Grant Agreement.

**17. Construction Inspection and Approval.**

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

**18. Planning Projects.**

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

**19. Operation and Maintenance.**

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state, and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for:
  1. Operating the airport's aeronautical facilities whenever required;
  2. Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
  3. Promptly notifying pilots of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or

facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

**20. Hazard Removal and Mitigation.**

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

**21. Compatible Land Use.**

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

**22. Economic Nondiscrimination.**

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to:
  - 1. Furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
  - 2. Charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
- d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
- e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable

classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.

- f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including, but not limited to maintenance, repair, and fueling) that it may choose to perform.
- g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
- h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
- i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

**23. Exclusive Rights.**

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

**24. Fee and Rental Structure.**

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for

which a Grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

**25. Airport Revenues.**

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
  1. If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.
  2. If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
  3. Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at 49 U.S.C. § 47102), if the FAA determines the airport sponsor meets the requirements set forth in Section 813 of Public Law 112-95.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
- c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of 49 U.S.C. § 47107.

**26. Reports and Inspections.**

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the

public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;

- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this Grant Agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
  1. all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
  2. all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

**27. Use by Government Aircraft.**

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that:

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

**28. Land for Federal Facilities.**

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

**29. Airport Layout Plan.**

- a. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, it will keep up to date at all times an airport layout plan of the airport showing:
1. boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
  2. the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;
  3. the location of all existing and proposed non-aviation areas and of all existing improvements thereon; and
  4. all proposed and existing access points used to taxi aircraft across the airport's property boundary.

Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

- b. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, if a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary:
1. eliminate such adverse effect in a manner approved by the Secretary; or
  2. bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

**30. Civil Rights.**

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, color, and national origin (including limited English proficiency) in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4); creed and sex (including sexual orientation and gender identity) per 49 U.S.C. § 47123 and related requirements; age per the Age Discrimination Act of 1975 and related requirements; or disability per the Americans with Disabilities Act of 1990 and related requirements, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any program and activity conducted with, or benefiting from, funds received from this Grant.

- a. Using the definitions of activity, facility, and program as found and defined in 49 CFR §§ 21.23(b) and 21.23(e), the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by or pursuant to these assurances.
- b. Applicability
  1. Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
  2. Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter, or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
  3. Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

1. So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
  2. So long as the sponsor retains ownership or possession of the property.
- d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this Grant Agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

"The (**[Selection Criteria: Sponsor Name]**), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, [select businesses, or disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award."

e. Required Contract Provisions.

1. It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the Department of Transportation (DOT), and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.



2. It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
3. It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
4. It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
  - a. For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
  - b. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

**31. Disposal of Land.**

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order:
  1. Reinvestment in an approved noise compatibility project;
  2. Reinvestment in an approved project that is eligible for grant funding under 49 U.S.C. § 47117(e);
  3. Reinvestment in an approved airport development project that is eligible for grant funding under 49 U.S.C. §§ 47114, 47115, or 47117;
  4. Transfer to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport; or
  5. Payment to the Secretary for deposit in the Airport and Airway Trust Fund.

If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development

project that would otherwise be eligible for grant funding or any permitted use of airport revenue.

- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order:
  1. Reinvestment in an approved noise compatibility project;
  2. Reinvestment in an approved project that is eligible for grant funding under 49 U.S.C. § 47117(e);
  3. Reinvestment in an approved airport development project that is eligible for grant funding under 49 U.S.C. §§ 47114, 47115, or 47117;
  4. Transfer to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport; or
  5. Payment to the Secretary for deposit in the Airport and Airway Trust Fund.
- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
- d. Disposition of such land under (a), (b), or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

**32. Engineering and Design Services.**

If any phase of such project has received Federal funds under Chapter 471 subchapter 1 of Title 49 U.S.C., it will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services in the same manner as a contract for architectural and engineering services is negotiated under Chapter 11 of Title 40 U.S.C., or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

**33. Foreign Market Restrictions.**

It will not allow funds provided under this Grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by

the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

**34. Policies, Standards, and Specifications.**

It will carry out any project funded under an Airport Improvement Program Grant in accordance with policies, standards, and specifications approved by the Secretary including, but not limited to, current FAA Advisory Circulars (<https://www.faa.gov/airports/aip/media/aip-pfc-checklist.pdf>) for AIP projects as of [Selection Criteria: Project Application Date].

**35. Relocation and Real Property Acquisition.**

- a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
- b. It will provide a relocation assistance program offering the services described in Subpart C of 49 CFR Part 24 and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

**36. Access By Intercity Buses.**

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

**37. Disadvantaged Business Enterprises.**

The sponsor shall not discriminate on the basis of race, color, national origin, or sex, in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. §§ 3801-3809, 3812).

**38. Hangar Construction.**

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

**39. Competitive Access.**

- a. If the airport owner or operator of a medium or large hub airport (as defined in 49 U.S.C. § 47102) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that:
  1. Describes the requests;
  2. Provides an explanation as to why the requests could not be accommodated; and
  3. Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

**APPENDIX 6**

**MANDATORY PROVISIONS**

[https://www.faa.gov/airports/aip/procurement/federal\\_contract\\_provisions/](https://www.faa.gov/airports/aip/procurement/federal_contract_provisions/)



**FAA**  
**Airports**

## **Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects**

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**Record of Changes**

No.	Date	Item	Change
1	1/29/2016	Entire Document	Re-structured document to enhance user understanding of use and applicability; added suggested provisions for "Termination for Cause", "Recovered Materials", "Seismic Safety".
2	6/10/2016	Table 1	Distracted Driving: Updated "Dollar Threshold" to \$3,500 to reflect current micro-purchase threshold.
3	6/10/2016	A2, Affirmative Action	Update the reference to the Department of Labor online document to be "Participation Goals for Minority and Females"
4	6/10/2016	A12, Disadvantaged Business Enterprise	A12.3: Changed Title to "Required Provisions" A12.3.1: Corrected starting timeframe for submitting written confirmation from "Owner Notice of Award" to "bid opening" A12.3.1: Provided two sets of last paragraphs to reflect change (7 days to 5 days) that occurs on December 31, 2016. A12.3.2: Moved Race/Gender Neutral language up and renamed heading to reflect text is solicitation language. A12.3.3: Moved and renamed contract clause information and clarified it is for prime contract covered by a DBE program.
5	12/12/2017	Cover	Change title of document for clarity
6	12/12/2017	1. Purpose of this Document	Added clarifying text addressing purpose and limitations of this guidance. 1.7-1.9: Added definitions of contract, applicant, bid

No.	Date	Item	Change
7	12/12/2017	2. Sponsor requirements	Added clarifying text addressing sponsor responsibilities.
8	12/12/2017	3. Typical Procurement Steps	Added clarifying text for typical procurement process steps.
9	12/12/2017	Table 1 – Applicability Matrix	Re-arranged table in alphabetic order. Added “Solicitation” column to address solicitation provisions Item I, Seismic Safety: Added Limited Application Added note on Airport Concessions Disadvantaged Business Enterprises
10	12/12/2017	All Clauses	Clarifying revisions made to applicability section.
11	12/12/2017	A5, Civil Rights - General	Rephrased General Civil Rights Provision to simplify language and to clarify duration of obligation for tenant/concessionaire/lessee
12	12/12/2017	A6.3.1 Civil Rights – Solicitations	Added sponsor must select either DBE or ACDBE
12	12/12/2017	A12, Disadvantaged Business Enterprise	The deadline to submit DBE confirmation of participation is now 5 days after bid opening or as a matter of bid responsiveness. Updated DBE contract assurance (12.3.3) to match language of 49 CFR § 26.13
13	12/12/2017	A24, Tax Delinquency and Felony Conviction	New certification addressing contractor tax delinquency and felony conviction.
14	6/19/2018	6.2.1, Applicability of Title VI Solicitation Notice	For Title VI Clauses for Compliance with Nondiscrimination Requirements, change second sentence in second column to changed “are already subject to nondiscrimination requirements” to “are <b>not</b> already subject to nondiscrimination requirements”.
15	6/19/2018	A6.4.1, Title VI Clauses for Compliance with Nondiscrimination Requirements	In second item, changed “are already subject to nondiscrimination requirements” to “are <b>not</b> already subject to nondiscrimination requirements”.



## CONTRACT GUIDANCE

### 1. Purpose of this Document

- 1) The purpose of this document is to establish a convenient resource for Sponsors that consolidates all possible provisions and clauses into one document that includes an applicability matrix. This document itself does not create, revise or delete requirements for participation in the Airport Improvement Program. The source of requirements addressed within this document are identified within the section for each individual clause.
- 2) Federal laws and regulations require that an sponsor (a recipient of federal assistance) include specific clauses in certain contracts, solicitations, or specifications regardless of whether or not the project is federally funded.
- 3) The term **sponsor** is used in this document to mean either an obligated sponsor on a project that is not federally funded, or a sponsor on an AIP funded project.
- 4) The term **Owner** is generally used in the solicitation or contract clauses because of its common use in public contracts.
- 5) An Owner becomes an obligated sponsor upon acceptance of the Airport Improvement Program (AIP) grant assurances associated with current or prior AIP grant funded projects.
- 6) For purposes of determining requirements for contract provisions, the term **contract** includes subcontracts and supplier contracts such as purchase orders.
- 7) For purpose of remaining compliant with its obligations, a sponsor must incorporate applicable contract provisions in all its procurements and contract documents. Unless otherwise stated, these provisions flow down to subcontracts and sub-tier agreements.
- 8) The term **contractor** is understood to mean a contractor, subcontractor, or consultant; and means one who participates, through a contract or subcontract (at any tier).
- 9) The term **bid** is understood to mean a bid, an offer, or a proposal.
- 10) **Applicant:**
  - a. For the Equal Employment Opportunity (EEO) clause, the term **applicant** means an applicant for employment (whether or not the phrase, *for employment*, follows the word applicant or applicants).
  - b. For all other clauses, the term **applicant** means a bidder, offeror, or proposer for a contract.

### 2. Sponsor Requirements

In general, the sponsor must take the following actions in order to remain consistent with its obligations:

- 1) Include in its procurements the provisions that are applicable to its project.

- 2) Not incorporate the entire contract provisions guidelines in its solicitation or contract documents, whether by reference or by inclusion in whole. Incorporation of this entire guidance document creates potential for ambiguous interpretation and may lead to improper application that unnecessarily increases price. A sponsor that fails to properly incorporate applicable contract clauses may place themselves at risk for audit findings or denial of Federal funding.
- 3) Incorporate applicable contract provisions using mandatory language as required. The subheading entitled *Applicability* advises whether a particular clause or provision has mandatory language that a sponsor must use.
  - (a) Mandatory Language - Whenever a clause or provision has mandatory text, the sponsor must incorporate the text of the provision **without change**, except where specific adaptive input is necessary (e.g. such as the sponsor's name).
  - (b) No Mandatory Language Provided - For provisions without mandatory language, this guidance provides model language acceptable to the FAA. Some sponsors may already have standard procurement language that is equivalent to those federal provisions. In these cases, sponsors may use their existing standard procurement provision language provided the text meets the intent and purpose of the Federal law or regulation.
- 4) Require the contractor (including all subcontractors) to insert these contract provisions in each lower tier contract (e.g. subcontract or sub-agreement).
- 5) Require the contractor (including all subcontractors) to incorporate the applicable requirements of these contract provisions by reference for work done under any purchase orders, rental agreements and other agreements for supplies or services.
- 6) Require that the prime contractor be responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor or service provider.
- 7) Verify that any required local or State provision does not conflict with or alter a Federal law or regulation.

### 3. Typical Procurement Steps

The usual procurement steps in a project are:

- 1) Solicitation, Request for Bids or Request for Proposals – This is also called the Advertisement or Notice to Bidders.
- 2) Bidding or Accepting Proposals – In this stage, the bidders receive a complete set of the procurement documents, also known as the project manual. The project manual will typically include a copy of the solicitation, instructions-to-bidders, bid forms, certifications and representations, general provisions, contract conditions, copy of contract, project drawings, technical specifications and related project documents.
- 3) Bid/Proposal Evaluation – Period when Sponsor tabulates and reviews all proposals for bid responsiveness and bidder responsibility.
- 4) Award – Point when the Sponsor formally awards the contract to the successful bidder.

- 5) Execution of Contract – Point at which the Sponsor formally enters into a legally binding agreement to perform services or provide goods.

#### **4. Applicability Matrix for Contract Provisions**

Table 1 summarizes the applicability of contract provisions based upon the type of contract or agreement. The dollar threshold represents the value at which, when equal to or exceeded, the sponsor must incorporate the provision in the contract or agreement.

Supplemental information addressing applicability and use for each provision is located in Appendix A. Appendix A and the Matrix include notes indicating when the sponsor may incorporate references in the **solicitation** in lieu of including the entire text.

**Meaning of cell values**

- Info – Sponsor has discretion on whether to include clause in its contracts.
- Limited – Provision with limited applicability depending on circumstances of the procurement.
- n/a – Provision that is not applicable for that procurement type.
- NIS – Provision that does not need to be included or referenced in the solicitation document
- REF – Provision to be incorporated into the solicitation by reference.
- REQD - Provision the sponsor must incorporate into procurement documents.

**Table 1 – Applicability of Provisions**

Provisions/Clauses	Dollar Threshold	Solicitation	Professional Services	Construction	Equipment	Property (Land)	Non-AIP Contracts
<u>Access to Records and Reports</u>	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
<u>Affirmative Action Requirement</u>	\$10,000	REQD	Limited	REQD	Limited	Limited	n/a
<u>Breach of Contract</u>	\$150,000	NIS	REQD	REQD	REQD	REQD	n/a
<u>Buy American Preferences</u>	\$ 0	REF	Limited	REQD	REQD	Limited	n/a
(1) <u>Buy American Statement</u>	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
(2) <u>BA – Total Facility</u>	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
(3) <u>B.A. – Manufactured Product</u>	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
<u>Civil Rights – General</u>	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
<u>Civil Rights - Title VI Assurances</u>	\$ 0	REF	REQD	REQD	REQD	REQD	REQD
(1) <u>Notice - Solicitation</u>	\$ 0	REQD	REQD	REQD	REQD	REQD	REQD
(2) <u>Clause - Contracts</u>	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
(3) <u>Clause – Transfer of U.S. Property</u>	\$ 0	NIS	n/a	n/a	n/a	Limited	REQD
(4) <u>Clause – Transfer of Real Property</u>	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(5) <u>Clause - Construct/Use/Access to Real Property</u>	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(6) <u>List – Pertinent Authorities</u>	\$0	NIS	REQD	REQD	REQD	REQD	REQD
<u>Clean Air/Water Pollution Control</u>	\$150,000	NIS	REQD	REQD	REQD	REQD	n/a
<u>Contract Work Hours and Safety Standards</u>	\$100,000	NIS	Limited	REQD	Limited	Limited	n/a
<u>Copeland Anti-Kickback</u>	\$ 2,000	NIS	Limited	REQD	Limited	Limited	n/a
<u>Davis Bacon Requirements</u>	\$ 2,000	REF	Limited	REQD	Limited	Limited	n/a
<u>Debarment and Suspension</u>	\$25,000	REF	REQD	REQD	REQD	Limited	n/a
<u>Disadvantaged Business Enterprise</u>	\$ 0	REF	REQD	REQD	REQD	REQD	n/a
<u>Distracted Driving</u>	\$3,500	NIS	REQD	REQD	REQD	REQD	n/a
<u>Energy Conservation Requirements</u>	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
<u>Equal Employment Opportunity</u>	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
(1) <u>EEO Contract Clause</u>	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
(2) <u>EEO Specification</u>	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
<u>Federal Fair Labor Standards Act</u>	\$ 0	NIS	REQD	REQD	REQD	REQD	Info
<u>Foreign Trade Restriction</u>	\$ 0	REF	REQD	REQD	REQD	REQD	n/a
<u>Lobbying Federal Employees</u>	\$ 100,000	REF	REQD	REQD	REQD	REQD	n/a
<u>Occupational Safety and Health Act</u>	\$ 0	NIS	REQD	REQD	REQD	REQD	Info
<u>Prohibition of Segregated Facilities</u>	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
<u>Recovered Materials</u>	\$10,000	REF	Limited	REQD	REQD	Limited	n/a
<u>Rights to Inventions</u>	\$ 0	NIS	Limited	Limited	Limited	n/a	n/a
<u>Seismic Safety</u>	\$ 0	NIS	Limited	Limited	Limited	n/a	n/a
<u>Tax Delinquency and Felony Conviction</u>	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
<u>Termination of Contract</u>	\$10,000	NIS	REQD	REQD	REQD	REQD	n/a
<u>Veteran’s Preference</u>	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a

**Airport Concessions Disadvantage Business Enterprise (ACDBE) Notes:**

1. Language relative to solicitation for ACDBEs does not need to be included in AIP funded solicitations, since in no case are concessions activities funded with federal funds.
2. Airport sponsors must include the appropriate Title VI language in their solicitation notices when they seek proposals for concessions.

## **APPENDIX A – CONTRACT PROVISIONS**

### **A1 ACCESS TO RECORDS AND REPORTS**

#### **A1.1 SOURCE**

2 CFR § 200.333

2 CFR § 200.336

FAA Order 5100.38

#### **A1.2 APPLICABILITY**

2 CFR § 200.333 requires a sponsor to retain records pertinent to a Federal award for a period of three years from submission of final closure documents. 2 CFR § 200.336 establishes that sponsors must provide Federal entities the right to access records pertinent to the Federal award. FAA policy extends these requirements to the sponsor's contracts and subcontracts of AIP funded projects.

**Contract Types** – The sponsor must include this provision in all contracts and subcontracts of AIP funded projects.

**Use of Provision** – No mandatory language provided. The following language is acceptable to the FAA with meeting the intent of this requirement. If the sponsor prefers to use different language, the sponsor's language must fully satisfy the requirements of §§ 200.333 and 200.336.

#### **A1.3 CONTRACT CLAUSE**

##### **ACCESS TO RECORDS AND REPORTS**

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Owner, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

## **A2 AFFIRMATIVE ACTION REQUIREMENT**

### **A2.1 SOURCE**

41 CFR part 60-4

Executive Order 11246

### **A2.2 APPLICABILITY**

**Minority Participation.** Sponsors are required to set goals for minority participation in AIP funded projects exceeding \$10,000. The goals for minority participation derive from Economic Area (EA) and Standard Metropolitan Statistical Area (SMSA) as established in Volume 45 of the Federal Register dated 10/3/80. Page 65984 contains a table of all EAs and SMSAs and the associated minority participation goals.

To find the goals for minority participation, a sponsor must either refer to the Federal Register Notice or to the Department of Labor online document, "[Participation Goals for Minorities and Females](#)". EAs and SMSAs span state boundaries. A sponsor may have to refer to entries for adjacent states in order to locate the goal for the project location.

**Female Participation.** Executive Order 11246 has set a goal of 6.9% nationally for female participation for all construction projects. This value remains constant for all counties and states.

#### **Contract Types –**

*Construction* – The sponsor must incorporate this notice in all solicitations for bids or requests for proposals for AIP funded construction work contracts and subcontracts that exceed \$10,000. Construction work means construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection and other onsite functions incidental to the actual construction.

*Equipment* – The sponsor must incorporate this notice in any equipment project exceeding \$10,000 that involves installation of equipment onsite (e.g. electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at a manufacturer's plant (e.g. firefighting and snow removal vehicles).

*Professional Services* – The sponsor must incorporate this notice in any professional service agreement if the professional services agreement includes tasks that meet the definition of construction work [as defined by the U.S. Department of Labor (DOL)] and exceeds \$10,000. Examples include installation of monitoring systems (e.g. noise, environmental, etc.).

*Property/Land* – The sponsor must incorporate this notice in any agreement associated with land acquisition if the agreement includes construction work (defined above) that exceeds \$10,000. Examples include demolition of structures or installation of boundary fencing.

**Use of Provision – MANDATORY TEXT.** The sponsor must:

- (a) Incorporate the text of this provision in its solicitations without modification.
- (b) Incorporate the applicable minority participation goal and the covered area by geographic name.
- (c) Not simply insert a reference to the 1980 Federal Register Notice.

### **A2.3 SOLICITATION CLAUSE**

#### **NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION to ENSURE EQUAL EMPLOYMENT OPPORTUNITY**

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

#### **Timetables**

- Goals for minority participation for each trade: ***[sponsor must insert established goal]***  
Goals for female participation in each trade: 6.9%

These goals are applicable to all of the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a) and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.



4. As used in this notice and in the contract resulting from this solicitation, the “covered area” is *[sponsor must insert state, county, and city]*.

### **A3 BREACH OF CONTRACT TERMS**

#### **A3.1 SOURCE**

2 CFR § 200 Appendix II(A)

#### **A3.2 APPLICABILITY**

This provision requires sponsors to incorporate administrative, contractual or legal remedies if contractor violate or breach contract terms. The sponsor must also include appropriate sanctions and penalties.

**Contract Types** – This provision is required for all contracts that exceed the simplified acquisition threshold as stated in 2 CFR Part 200, Appendix II (A). This threshold is occasionally adjusted for inflation and is now equal to \$150,000.

**Use of Provision** – No mandatory language provided. The following language is acceptable to the FAA as meeting the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of part 200. Select either “contractor” or “consultant” as applicable.

#### **A3.3 CONTRACT CLAUSE**

##### **BREACH OF CONTRACT TERMS**

Any violation or breach of terms of this contract on the part of the [Contractor | Consultant] or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide [Contractor | Consultant] written notice that describes the nature of the breach and corrective actions the [Contractor | Consultant] must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner’s notice will identify a specific date by which the [Contractor | Consultant] must correct the breach. Owner may proceed with termination of the contract if the [Contractor | Consultant] fails to correct the breach by the deadline indicated in the Owner’s notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

## **A4 BUY AMERICAN PREFERENCE**

### **A4.1 SOURCE**

Title 49 USC § 50101

### **A4.2 APPLICABILITY**

The Buy American Preference requirement in 49 USC § 50101 requires that all steel and manufactured goods used on AIP projects be produced in the United States. The statute gives the FAA the ability to issue a waiver to a sponsor to use non-domestic material on an AIP funded project subject to meeting certain conditions. A sponsor may request that the FAA issue a waiver from the Buy American Preference requirements if the FAA finds that:

- 1) Applying the provision is not in the public interest;
- 2) The steel or manufactured goods are not available in sufficient quantity or quality in the United States;
- 3) The cost of components and subcomponents produced in the United States is more than 60 percent of the total components of a facility or equipment, and final assembly has taken place in the United States. Items that have an FAA standard specification item number (such as specific airport lighting equipment) are considered the equipment.
- 4) Applying this provision would increase the cost of the overall project by more than 25 percent.

**Timing of Waiver Requests.** Sponsors desiring a Type 1 or Type 2 waiver must submit their waiver requests *before* issuing a solicitation for bids or a request for proposal for a project.

The sponsor must submit Type 3 or Type 4 waiver requests *prior* to executing the contract. The FAA will generally not consider waiver requests after execution of the contract except where extraordinary and extenuating circumstances exist. The FAA cannot review waiver requests with incomplete information. Sponsors must assess the adequacy of the waiver request and associated information prior to forwarding a waiver request to the FAA for action.

**Buy American Conformance List.** The FAA Office of Airports maintains a listing of equipment that has received a nationwide waiver from the Buy American Preference requirements or that fully meet the Buy American requirements. The Nationwide Buy American Waiver List is available online at [www.faa.gov/airports/aip/buy\\_american/](http://www.faa.gov/airports/aip/buy_american/). Products listed on the Buy American Conformance list do not require additional submittal of domestic content information under a project specific Buy American Preference waiver.

**Facility Waiver Requests.** For construction of a facility, the sponsor may submit the waiver request after bid opening, but prior to contract execution. Examples of facility construction include terminal buildings, terminal renovation, and snow removal equipment buildings.

#### **Contract Types –**

*Construction and Equipment* – The sponsor must meet the Buy American Preference requirements of 49 USC § 50101 for all AIP funded projects that require steel or manufactured

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#### **Guidelines for Contract Provisions for Obligated Sponsors and Airport Improvement Program Projects**

goods. The Buy America requirements flow down from the sponsor to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are also in compliance.

Note: The Buy American Preference does not apply to equipment a contractor uses as a tool of its trade and which does not remain as part of the project.

*Professional Services* – Professional service agreements (PSAs) do not normally result in a deliverable that meets the definition of a manufactured product. However, the emergence of various project delivery methods has created situations where task deliverables under a PSA may include a manufactured product. If a PSA includes providing a manufactured good as a deliverable under the contract, the sponsor must include the Buy American Preference provision in the agreement.

*Property* – Most land transactions do not involve acquiring a manufactured product. However, under certain circumstances, a property acquisition project could result in the installation of a manufactured product. For example, the installation of property fencing, gates, doors and locks, etc. represent manufactured products acquired under an AIP funded land project that must comply with Buy American Preferences.

**Use of Provision** – No mandatory language provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s revised language must fully comply with 49 USC § 50101.

There are two types of Buy American certifications. The sponsor must incorporate the appropriate “Certificate of Buy America Compliance” in the solicitation:

- Projects for a facility (buildings such as terminals, snow removal equipment (SRE) buildings, aircraft rescue and firefighting (ARFF) buildings, etc.) – Insert the Certificate of Compliance Based on Total Facility.
- Projects for non-facility development (non-building construction projects such as runway or roadway construction or equipment acquisition projects) – Insert the Certificate of Compliance Based on Equipment and Materials Used on the Project.

#### **A4.3 SOLICITATION CLAUSE**

##### **A4.3.1 Buy American Preference Statement**

###### **BUY AMERICAN PREFERENCE**

The Contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP funded projects are produced in the United States, unless the Federal Aviation Administration has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must complete and submit the Buy America certification included herein with their bid or offer. The Owner will reject as nonresponsive any bid or offer that does not include a completed Certificate of Buy American Compliance.

**A4.3.2 Certificate of Buy American Compliance – Total Facility**

**CERTIFICATE OF BUY AMERICAN COMPLIANCE FOR TOTAL FACILITY**

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with its proposal. The bidder or offeror must indicate how it intends to comply with 49 USC § 50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark (✓) or the letter “X”.

- Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:
- a) Only installing steel and manufactured products produced in the United States; or
  - b) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
  - c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
  - To faithfully comply with providing U.S. domestic products.
  - To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
- a) To submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that supports the type of waiver being requested.
  - b) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
  - c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
  - d) To furnish U.S. domestic product for any waiver request that the FAA rejects.
  - e) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

**Required Documentation**

**Type 3 Waiver** – The cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components and subcomponents of the “facility”. The required documentation for a Type 3 waiver is:

- a) Listing of all manufactured products that are not comprised of 100 percent U.S. domestic content (excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).
- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- c) Percentage of non-domestic component and subcomponent cost as compared to total “facility” component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

**Type 4 Waiver** – Total cost of project using U.S. domestic source product exceeds the total project cost using non-domestic product by 25 percent. The required documentation for a Type 4 of waiver is:

- a) Detailed cost information for total project using U.S. domestic product
- b) Detailed cost information for total project using non-domestic product

**False Statements:** Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

\_\_\_\_\_

Company Name

\_\_\_\_\_

Title

**A4.3.3 Certificate of Buy American Compliance –  
Manufactured Product**

**Certificate of Buy American Compliance for Manufactured Products**

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark (✓) or the letter “X”.

- Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:
- a) Only installing steel and manufactured products produced in the United States;
  - b) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
  - c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
  2. To faithfully comply with providing U.S. domestic product.
  3. To furnish U.S. domestic product for any waiver request that the FAA rejects
  4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
1. To submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that supports the type of waiver being requested.
  2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.
  3. To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
  4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

**Required Documentation**

**Type 3 Waiver** – The cost of the item components and subcomponents produced in the United States is more than 60 percent of the cost of all components and subcomponents of the “item”. The required documentation for a Type 3 waiver is:

- a) Listing of all product components and subcomponents that are not comprised of 100 percent U.S. domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).
- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- c) Percentage of non-domestic component and subcomponent cost as compared to total “item” component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

**Type 4 Waiver** – Total cost of project using U.S. domestic source product exceeds the total project cost using non-domestic product by 25 percent. The required documentation for a Type 4 of waiver is:

- a) Detailed cost information for total project using U.S. domestic product
- b) Detailed cost information for total project using non-domestic product

**False Statements:** Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

\_\_\_\_\_

Company Name

\_\_\_\_\_

Title



**A5 CIVIL RIGHTS - GENERAL**

**A5.1 SOURCE**

49 USC § 47123

**A5.2 APPLICABILITY**

There are two separate civil rights provisions that apply to projects:

1. FAA General Civil Rights Provision and,
2. Title VI provisions, which are addressed in Appendix A6.

**Contract Types** – The General Civil Rights Provisions found in 49 USC § 47123, derived from the Airport and Airway Improvement Act of 1982, Section 520, apply to all sponsor contracts *regardless* of funding source.

**Use of Provision – MANDATORY TEXT.** There are two separate general civil rights provisions —one that is used for contracts, and one that is used for lease agreements or transfer agreements. The sponsor must incorporate the text of the appropriate provision without modification into the contract, or the lease or transfer agreement.

**A5.3 CONTRACT CLAUSE (Use the Correct Clause for the Situation)**

**A5.3.1 Clause that is used for Contracts**

**GENERAL CIVIL RIGHTS PROVISIONS**

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

**A5.3.2 Clause that is used for Lease Agreements or Transfer Agreements**

**GENERAL CIVIL RIGHTS PROVISIONS**

The (tenant/concessionaire/lessee) agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the (tenant/concessionaire/lessee) transfers its obligation to another, the transferee is obligated in the same manner as the (tenant/concessionaire/lessor).

This provision obligates the (tenant/concessionaire/lessee) for the period during which the property is owned, used or possessed by the (tenant/concessionaire/lessee) and the airport remains obligated to the

Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

**A6 CIVIL RIGHTS – TITLE VI ASSURANCE**

**A6.1 SOURCE**

49 USC § 47123

FAA Order 1400.11

**A6.2 APPLICABILITY**

Title VI of the Civil Rights Act of 1964, as amended, (Title VI) prohibits discrimination on the grounds of race, color, or national origin under any program or activity receiving Federal financial assistance. Sponsors must include appropriate clauses from the Standard DOT Title VI Assurances in all contracts and solicitations.

The text of each individual clause comes from the U.S. Department of Transportation Order DOT 1050.2, Standard Title VI Assurances and Nondiscrimination Provisions, effective April 24, 2013. These assurances require that the Recipient (the sponsor) insert the appropriate clauses in the form provided by the DOT. Where the clause refers to the applicable activity, project, or program, it means the AIP project.

The clauses are as follows:

**A6.2.1 Applicability of Title VI Solicitation Notice**

<b>Contract Clause</b>	<b>The Sponsor must include the contract clause in:</b>	<b>Clause Text is Included in Paragraph</b>
Title VI Solicitation Notice – <ul style="list-style-type: none"> <li>• Assurance 2 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses</li> <li>• Assurance 30d of the Airport Sponsor Assurances</li> </ul>	1) All AIP funded solicitations for bids, requests for proposals, or any work subject to Title VI regulations; and 2) All sponsor proposals for negotiated agreements <b>regardless of funding source.</b>	A6.3.1
Title VI Clauses for Compliance with Nondiscrimination Requirements <ul style="list-style-type: none"> <li>• Assurance 3 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses</li> <li>• Assurance 30e.1 of the Airport Sponsor Assurances</li> </ul>	Every contract or agreement (unless the sponsor has determined, and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities)  It has been determined that service contracts with utility companies that are not already subject to nondiscrimination requirements must include this clause.	A6.4.1

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
<p>Title VI Required Clause for Property Interests Transferred from the United States</p> <ul style="list-style-type: none"> <li>Assurance 4 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses</li> <li>Assurance 30e.3 of the Airport Sponsor Assurances</li> </ul>	<p>As a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.</p> <p>This is a rare occurrence and it will be the responsibility of the United States government to include the clause in the contract.</p>	<p>A6.4.2</p>
<p>Title VI Required Clause for Transfer of Real Property Acquired or Improved Under the Activity, Facility or Program –</p> <ul style="list-style-type: none"> <li>Assurance 5 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses</li> <li>Assurance 30e.4a of the Airport Sponsor Assurances</li> </ul>	<p>As a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the sponsor with other parties for all transfers of real property acquired or improved under Airport Improvement Program</p> <p>This applies to agreements such as leases where a physical portion of the airport is transferred for use, for example a fuel farm, apron space, or a parking facility.</p>	<p>A6.4.3</p>
<p>Clause for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program</p> <ul style="list-style-type: none"> <li>Assurance 6 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses</li> <li>Assurance 30e.4b of the Airport Sponsor Assurances</li> </ul>	<p>In any future (deeds, leases, licenses, permits, or similar instruments) entered into by the sponsor with other parties for the construction or use of, or access to, space on, over, or under real property acquired or improved under Airport Improvement Program</p> <p>This applies to agreements such as leases of concession space in a terminal.</p>	<p>A6.4.4</p>
<p>Title VI List of Pertinent Nondiscrimination Acts and Authorities</p> <ul style="list-style-type: none"> <li>Assurance 3 of the DOT Standard Title VI Assurances and Nondiscrimination Clauses</li> <li>Assurance 30e.2 of the Airport Sponsor Assurances</li> </ul>	<p>Insert this list in every contract or agreement, unless the sponsor has determined, and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities.</p> <p><b>This list can be omitted if the FAA has determined that the contractor or company is already subject to nondiscrimination requirements.</b></p>	<p>A6.4.5</p>

### **A6.3 SOLICITATION CLAUSE**

**The sponsor must include this clause in:**

- 1) All AIP funded solicitations for bids, requests for proposals, or any work subject to Title VI regulations; and
- 2) All sponsor proposals for negotiated agreements **regardless of funding source.**

#### **A6.3.1 Title VI Solicitation Notice**

**Title VI Solicitation Notice:**

The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, [select disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

#### A6.4 CONTRACT CLAUSES

##### A6.4.1 Title VI Clauses for Compliance with Nondiscrimination Requirements

The sponsor must include this contract clause in:

- 1) Every contract or agreement (unless the sponsor has determined, and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities); and
- 2) Service contracts with utility companies that are not already subject to nondiscrimination requirements.

##### **Compliance with Nondiscrimination Requirements:**

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Contractor’s noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### **A6.4.2 Title VI Clauses for Deeds Transferring United States Property**

This is a rare occurrence, and it will be the responsibility of the United States government to include the clause in the contract. It will be included as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.

#### **CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY**

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of the Airport Improvement Program grant assurances.

**NOW, THEREFORE**, the Federal Aviation Administration as authorized by law and upon the condition that the (*Title of Sponsor*) will accept title to the lands and maintain the project constructed thereon in accordance with (*Name of Appropriate Legislative Authority*), for the (**Airport Improvement Program or other program for which land is transferred**), and the policies and procedures prescribed by the Federal Aviation Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 USC § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the (*Title of Sponsor*) all the right, title and interest of the U.S. Department of Transportation/Federal Aviation Administration in and to said lands described in (*Exhibit A attached hereto or other exhibit describing the transferred property*) and made a part hereof.

#### **(HABENDUM CLAUSE)**

**TO HAVE AND TO HOLD** said lands and interests therein unto (*Title of Sponsor*) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the (*Title of Sponsor*), its successors and assigns.

The (*Title of Sponsor*), in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the (*Title of Sponsor*) will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the Federal Aviation Administration and its assigns as such interest existed prior to this instruction].\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

**A6.4.3 Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program**

This applies to agreements such as leases where a physical portion of the airport is transferred for use—for example a fuel farm, apron space, or a parking facility—and will be included as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the sponsor with other parties for all transfers of real property acquired or improved under the Airport Improvement Program.

**CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE AIRPORT IMPROVEMENT PROGRAM**

The following clauses will be included in (deeds, licenses, leases, permits, or similar instruments) entered into by the (*Title of Sponsor*) pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
  1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, (*Title of Sponsor*) will have the right to terminate the (lease,



license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*

- C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the (*Title of Sponsor*) will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the (*Title of Sponsor*) and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

**A6.4.4 Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program**

This applies to agreements such as leases of concession space in a terminal and any future deeds, leases, licenses, permits, or similar instruments entered into by the sponsor with other parties for the construction or use of, or access to, space on, over, or under real property acquired or improved under the Airport Improvement Program.

**CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM**

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by (*Title of Sponsor*) pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above nondiscrimination covenants, (*Title of Sponsor*) will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*
- C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, (*Title of Sponsor*) will there upon revert to and vest in and become the absolute property of (*Title of Sponsor*) and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

**A6.4.5 Title VI List of Pertinent Nondiscrimination Acts and Authorities**

Insert this list in every contract or agreement, unless the sponsor has determined and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities. This list can be omitted if the FAA has determined that the contractor or company is already subject to nondiscrimination requirements.

**Title VI List of Pertinent Nondiscrimination Acts and Authorities**

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

**A7 CLEAN AIR AND WATER POLLUTION CONTROL**

**A7.1 SOURCE**

2 CFR § 200, Appendix II(G)

**A7.2 APPLICABILITY**

**Contract Types** – This provision is required for all contracts and lower tier contracts that exceed \$150,000.

**Use of Provision** – No mandatory language provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of Appendix II to 2 CFR §200.

**A7.3 CONTRACT CLAUSE**

**CLEAN AIR AND WATER POLLUTION CONTROL**

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC § 740-7671q) and the Federal Water Pollution Control Act as amended (33 USC § 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Contractor must include this requirement in all subcontracts that exceeds \$150,000.

**A8 CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS**

**A8.1 SOURCE**

2 CFR § 200, Appendix II(E)

**A8.2 APPLICABILITY**

Contract Workhours and Safety Standards Act Requirements (CWHSSA) requires contractors and subcontractors on covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over 40 in a workweek. CWHSSA prohibits unsanitary, hazardous, or dangerous working conditions on federally assisted projects. The Wage and Hour Division (WHD) within the U.S. Department of Labor (DOL) enforces the compensation requirements of this Act, while DOL's Occupational Safety and Health Administration (OSHA) enforces the safety and health requirements

**Contract Types –**

*Construction* – This provision applies to all contracts and lower tier contracts that exceed \$100,000, and employ laborers, mechanics, watchmen, and guards.

*Equipment* – This provision applies to any equipment project exceeding \$100,000 that involves installation of equipment onsite (e.g. electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at the vendor plant (e.g. ARFF and SRE vehicles).

*Professional Services* – This provision applies to professional service agreements that exceed \$100,000 and employs laborers, mechanics, watchmen, and guards. This includes members of survey crews and exploratory drilling operations.

*Property* – While most land transactions do not involve employment of laborers, mechanics, watchmen, and guards, under certain circumstances, a property acquisition project could require such employment. Examples include the installation of property fencing or testing for environmental contamination

**Use of Provision – MANDATORY TEXT.** Sponsors must incorporate this text without modification.

**A8.3 CONTRACT CLAUSE**

**CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS**

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a

rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration (FAA) or the Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause.

4. Subcontractors.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

## **A9 COPELAND “ANTI-KICKBACK” ACT**

### **A9.1 SOURCE**

2 CFR § 200, Appendix II(D)

29 CFR Parts 3 and 5

### **A9.2 APPLICABILITY and PURPOSE**

The Copeland (Anti-Kickback) Act (18 USC 874 and 40 USC 3145) makes it unlawful to induce by force, intimidation, threat of dismissal from employment, or by any other manner, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week.

#### **Contract Types –**

*Construction* – This provision applies to all construction contracts and subcontracts financed under the AIP that exceed \$2,000.

*Equipment* – This provision applies to all equipment installation projects (e.g. electrical vault improvements) financed under the AIP that exceed \$2,000. This provision does not apply to equipment acquisitions where the equipment is manufactured at the vendor’s plant (e.g. SRE and ARFF vehicles).

*Professional Services* –The emergence of different project delivery methods has created situations where Professional Service Agreements (PSAs) include tasks that meet the definition of construction, alteration, or repair as defined in 29 CFR Part 5. If such tasks result in work that qualifies as construction, alteration, or repair and it exceeds \$2,000, the PSA must incorporate the Copeland Anti-kickback provision.

*Property* –Ordinarily, land acquisition projects would not involve employment of laborers or mechanics and thus the Copeland Anti-Kickback provision would not apply. However, land projects that involve installation of boundary fencing and demolition of structures would involve laborers and mechanics. The sponsor must include this provision if the land acquisition project involves employment of laborers or mechanics for a contract exceeding \$2,000.

**Use of Provision – MANDATORY TEXT.** 29 CFR Part 5 establishes specific language a sponsor must use in construction contracts. The sponsor may not make any modification to the standard language. Architectural/Engineering (A/E) firms that employ laborers and mechanics on a task that meets the definition of construction, alteration, or repair are acting as a contractor. The sponsor may not substitute the term “contractor” for “consultant” in such instances.



**A9.3 CONTRACT CLAUSE**

**COPELAND “ANTI-KICKBACK” ACT**

Contractor must comply with the requirements of the Copeland “Anti-Kickback” Act (18 USC 874 and 40 USC 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Subcontractor must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week. Owner must report any violations of the Act to the Federal Aviation Administration.

**A10 DAVIS-BACON REQUIREMENTS**

**A10.1 SOURCE**

2 CFR § 200, Appendix II(D)

29 CFR Part 5

**A10.2 APPLICABILITY**

The Davis-Bacon Act ensures that laborers and mechanics employed under the contract receive pay no less than the locally prevailing wages and fringe benefits as determined by the Department of Labor.

**Contract Types –**

*Construction* – Incorporate into all construction contracts and subcontracts that exceed \$2,000 and include funding from the AIP.

*Equipment* – This provision applies to all equipment installation projects (e.g. electrical vault improvements) financed under the AIP that exceed \$ 2, 000. This provision does not apply to equipment acquisitions where the equipment is manufactured at the vendor’s plant (e.g. SRE and ARFF vehicles)

*Professional Services* – The emergence of different project delivery methods has created situations where Professional Service Agreements (PSAs) includes tasks that meet the definition of construction, alteration, or repair as defined in 29 CFR Part 5. If such tasks result in work that qualifies as construction, alteration, or repair and it exceeds \$2,000, the PSA must incorporate this clause.

*Property* – Ordinarily, land acquisition projects would not involve employment of laborers or mechanics and thus the provision would not apply. However, land projects that involve installation of boundary fencing and demolition of structures would involve laborers and mechanics. The sponsor must include this provision if the land acquisition project involves employment of laborers or mechanics for a contract exceeding \$2,000.

*Fencing Projects* – Fencing projects that exceed \$2,000 must include this provision.

**Use of Provision – MANDATORY TEXT.** 29 CFR part 5 establishes specific language a sponsor must use. The sponsor may not make any modification to the standard language. A/E firms that employ laborers and mechanics on a task that meets the definition of construction, alteration, or repair are acting as a contractor. The sponsor may not substitute the term “Contractor” for “Consultant” in such instances.

**A10.3 CONTRACT CLAUSE**

**DAVIS-BACON REQUIREMENTS**

1. Minimum Wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any

account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall

refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program: *Provided* that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## 2. Withholding.

The Federal Aviation Administration or the sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the Contractor, Sponsor, Applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## 3. Payrolls and Basic Records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records that show that the commitment to provide such benefits is

enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and that show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at [www.dol.gov/whd/forms/wh347instr.htm](http://www.dol.gov/whd/forms/wh347instr.htm) or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor, or Owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) The payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information is correct and complete;

(2) Each laborer and mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;

(3) Each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the sponsor, the Federal Aviation Administration, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, Sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman’s hourly rate) specified in the Contractor’s or subcontractor’s registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice’s level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau,

withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

#### 5. Compliance with Copeland Act Requirements.

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

#### 6. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

#### 7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of Eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.



**A11 DEBARMENT AND SUSPENSION**

**A11.1 SOURCE**

2 CFR part 180 (Subpart C)

2 CFR part 1200

DOT Order 4200.5

**A11.2 APPLICABILITY**

The sponsor must verify that the firm or individual that it is entering into a contract with is not presently suspended, excluded, or debarred by any Federal department or agency from participating in federally assisted projects. The sponsor accomplishes this by:

- 1) Checking the System for Award Management (SAM.gov) to verify that the firm or individual is not listed in SAM.gov as being suspended, debarred, or excluded;
- 2) Collecting a certification from the firm or individual that it is not suspended, debarred, or excluded; and
- 3) Incorporating a clause in the contract that requires lower tier contracts to verify that no suspended, debarred, or excluded firm or individual is included in the project.

**Contract Types** – This requirement applies to *covered transactions*, which are defined in 2 CFR part 180. AIP funded contracts are non-procurement transactions, as defined by §180.970. Covered transactions include any AIP-funded contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the amount of the contract is expected to equal or exceed \$25,000. This includes contracts associated with land acquisition projects.

**Use of Provision** – No mandatory language provided. The following language is acceptable to the FAA in meeting the intent of this requirement. If the sponsor uses different language, the sponsor's language must fully satisfy the requirements of 2 CFR part 180. For professional service agreements, sponsor may substitute bidder/offeror with consultant.

**A11.3 SOLICITATION CLAUSE**

**A11.3.1 Bidder or Offeror Certification**

**CERTIFICATION OF OFFERER/BIDDER REGARDING DEBARMENT**

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

**A11.3.2 Lower Tier Contract Certification**

**CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT**

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a “covered transaction”, must verify each lower tier participant of a “covered transaction” under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>.
2. Collecting a certification statement similar to the Certification of Offerer /Bidder Regarding Debarment, above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the Federal Aviation Administration later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

**A12 DISADVANTAGED BUSINESS ENTERPRISE**

**A12.1 SOURCE**

49 CFR part 26

**A12.2 APPLICABILITY**

A sponsor that anticipates awarding \$250,000 or more in AIP funded prime contracts in a federal fiscal year must have an approved Disadvantaged Business Enterprise (DBE) program on file with the FAA Office of Civil Rights (§ 26.21). The approved DBE program will identify a 3-year overall program goal that the sponsor bases on the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on the project (§ 26.45).

**Contract Types** – Sponsors with a DBE program on file with the FAA must include the three following provisions, if applicable:

- 1) Clause in all solicitations for proposals for which a contract goal has been established,
- 2) Clause in each prime contract, and
- 3) Clause in solicitations that are obtaining DBE participation through race/gender neutral means.

**Use of Provision –**

1. *Solicitations with a DBE Project Goal* – No mandatory language provided. 49 CFR §26.53 requires a sponsor’s solicitation to address what a contractor must submit on proposed DBE participation. The language of A12.3.1 is acceptable to the FAA in meeting the intent of this requirement. If the sponsor uses different language, the sponsor’s revised language must fully satisfy these requirements. The sponsor may require the contractor’s submittal on proposed DBE participation either at bid opening as a matter of responsiveness or within five days of bid opening as a matter of responsibility.
2. *Solicitations Relying on Race-gender Neutral Means* – No mandatory language provided. The language of A12.3.2 is acceptable to the FAA in meeting the intent of this requirement. If the sponsor uses different language, the sponsor’s revised language must fully satisfy requirements for a sponsor that is not applying a project specific contract goal but is covered by a DBE program on file with the FAA.
3. *Contracts Covered by DBE Program* – **MANDATORY TEXT PROVIDED**. Sponsors must incorporate this language if they have a DBE program on file with the FAA. This includes projects where DBE participation is obtained through race-gender neutral means (i.e. no project goal). Sections §26.13 and §26.29 establish mandatory language for contractor assurance and prompt payment. The sponsor must not modify the language.
4. Sponsors that are not required to have a DBE program on file with the FAA are not required to include DBE provisions and clauses.

**A12.3 REQUIRED PROVISIONS**

**A12.3.1 Solicitation Language (Solicitations that include a Project Goal)**

Information Submitted as a matter of bidder responsiveness:

The Owner's award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR §26.53.

As a condition of bid responsiveness, the Bidder or Offeror must submit the following information with its proposal on the forms provided herein:

- 1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- 2) A description of the work that each DBE firm will perform;
- 3) The dollar amount of the participation of each DBE firm listed under (1)
- 4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner's project goal; and
- 5) If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26.

Information submitted as a matter of bidder responsibility:

The Owner's award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR §26.53.

The successful Bidder or Offeror must provide written confirmation of participation from each of the DBE firms the Bidder or Offeror lists in its commitment within five days after bid opening.

- 1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- 2) A description of the work that each DBE firm will perform;
- 3) The dollar amount of the participation of each DBE firm listed under (1)
- 4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner's project goal; and
- 5) If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26.

**A12.3.2 Solicitation Language (Race/Gender Neutral Means)**

The requirements of 49 CFR part 26 apply to this contract. It is the policy of the [Insert Name of Owner] to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. The Owner encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

**A12.3.3 Prime Contracts (Projects Covered by a DBE Program)**

**DISADVANTAGED BUSINESS ENTERPRISES**

**Contract Assurance (§ 26.13) –**

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the Contractor from future bidding as non-responsible.

**Prompt Payment (§26.29) –** The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than [specify number] days from the receipt of each payment the prime contractor receives from [Name of recipient]. The prime contractor agrees further to return retainage payments to each subcontractor within [specify the same number as above] days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the [Name of Recipient]. This clause applies to both DBE and non-DBE subcontractors.

**A13 DISTRACTED DRIVING**

**A13.1 SOURCE**

Executive Order 13513

DOT Order 3902.10

**A13.2 APPLICABILITY**

The FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

**Contract Types** – Sponsors must insert this provision in all AIP funded contracts that exceed the micro-purchase threshold of 2 CFR §200.67 (currently set at \$3,500).

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA in meeting the intent of this requirement. If the sponsor uses different language, the sponsor’s revised language must fully satisfy these requirements.

**A13.3 CONTRACT CLAUSE**

**TEXTING WHEN DRIVING**

In accordance with Executive Order 13513, “Federal Leadership on Reducing Text Messaging While Driving”, (10/1/2009) and DOT Order 3902.10, “Text Messaging While Driving”, (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

**A14 ENERGY CONSERVATION REQUIREMENTS**

**A14.1 SOURCE**

2 CFR § 200, Appendix II(H)

**A14.2 APPLICABILITY**

The Energy Conservation Requirements of 2 CFR § 200 Appendix II(H) requires this provision on energy efficiency.

**Contract Types** – The sponsor must include this provision in all AIP funded contracts and lower-tier contracts.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s revised language must fully satisfy these requirements. Sponsor may substitute “Contractor and subcontractor” with “Consultant and sub-consultant” for professional service agreements.

**A14.3 CONTRACT CLAUSE**

**ENERGY CONSERVATION REQUIREMENTS**

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201 *et seq.*).

**A15 DRUG FREE WORKPLACE REQUIREMENTS**

**A15.1 SOURCE**

49 CFR part 32

Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*, as amended)

**A15.2 APPLICABILITY**

The Drug-Free Workplace Act of 1988 requires some Federal contractors and *all* Federal grantees to agree that they will provide drug-free workplaces as a condition of receiving a contract or grant from a Federal agency. The Act does *not* apply to contractors, subcontractors, or subgrantees, although the Federal grantees workplace may be where the contractors, subcontractors, or subgrantees are working.

**Contract Types** – This provision applies to all AIP funded projects, but not to the contracts between the grantee (the sponsor) and a contractor, subcontractors, suppliers, or subgrantees.

**Use of Provision** – No mandatory or recommended text provided because the requirements do not extend beyond the sponsor level.

**A15.3 CONTRACT CLAUSE**

None.



**A16 EQUAL EMPLOYEMENT OPPORTUNITY (EEO)**

**A16.1 SOURCE**

2 CFR 200, Appendix II(C)

41 CFR § 60-1.4

41 CFR § 60-4.3

Executive Order 11246

**A16.2 APPLICABILITY**

The purpose of this provision is to provide equal opportunity for all persons, without regard to race, color, religion, sex, or national origin who are employed or seeking employment with contractors performing under a federally assisted construction contract. There are two provisions — a construction clause and a specification clause.

The equal opportunity contract clause must be included in any contract or subcontract when the amount exceeds \$10,000. Once the equal opportunity clause is determined to be applicable, the contract or subcontract must include the clause for the remainder of the year, regardless of the amount or the contract.

**Contract Types –**

*Construction* – The sponsor must incorporate contract and specification language in all construction contracts and subcontracts as required above.

*Equipment* – The sponsor must incorporate contract and specification language into all equipment contracts as required above that involves installation of equipment onsite (e.g. electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at the vendor plant (e.g. ARFF and SRE vehicles).

*Professional Services* – The sponsor must include contract and specification language into all professional service agreements as required above.

*Property* – The sponsor must include contract and specification language into all land acquisition projects that include work that qualifies as construction work as defined by 41 CFR part 60 as required above. An example is installation of boundary fencing.

**Use of Provision – MANDATORY TEXT.** 41 CFR § 60-1.4 provides the mandatory *contract* language. 41 CFR § 60-4.3 provides the mandatory *specification* language. The sponsor must incorporate these clauses without modification.

**A16.3 MANDATORY CONTRACT CLAUSE**

**A16.3.1 EEO Contract Clause**

**EQUAL OPPORTUNITY CLAUSE**

During the performance of this contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identify, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the

administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**A16.3.2 EEO Specification**

**STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY  
CONSTRUCTION CONTRACT SPECIFICATIONS**

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- d. "Minority" includes:
  - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);
  - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
  - (4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR part 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other

contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the Contractor during the training period and the Contractor shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor

- by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or female sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions, including specific review of these items, with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally), the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing

subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR part 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**A17 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)**

**A17.1 SOURCE**

29 USC § 201, et seq

**A17.2 APPLICABILITY**

The U.S. Department of Labor (DOL) Wage and Hour Division administers the Fair Labor Standards Act (FLSA). This act prescribes federal standards for basic minimum wage, overtime pay, record keeping, and child labor standards.

**Contract Types** – Per the Department of Labor, all employees of certain enterprises having workers engaged in interstate commerce; producing goods for interstate commerce; or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person are covered by the FLSA.

All consultants, sub-consultants, contractors, and subcontractors employed under this federally assisted project must comply with the FLSA.

*Professional Services* – 29 CFR § 213 exempts employees in a bona fide executive, administrative or professional capacity. Because professional firms employ individuals that are not covered by this exemption, the sponsor’s agreement with a professional services firm must include the FLSA provision.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of 29 USC § 201. The sponsor must select *contractor* or *consultant*, as appropriate for the contract.

**A17.3 SOLICITATION CLAUSE**

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The [*Contractor* | *Consultant*] has full responsibility to monitor compliance to the referenced statute or regulation. The [*Contractor* | *Consultant*] must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.



**A18 LOBBYING AND INFLUENCING FEDERAL EMPLOYEES**

**A18.1 SOURCE**

31 USC § 1352 – Byrd Anti-Lobbying Amendment

2 CFR part 200, Appendix II(J)

49 CFR part 20, Appendix A

**A18.2 APPLICABILITY**

Consultants and contractors that apply or bid for an award of \$100,000 or more must certify that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or another award covered by 31 USC 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

**Contract Types** – The sponsor must incorporate this provision into all contracts exceeding \$100,000.

**Use of Provision – MANDATORY TEXT.** Appendix A to 49 CFR Part 20 prescribes language the sponsor must use. The sponsor must incorporate this provision without modification.

**A18.3 CONTRACT CLAUSE**

**CERTIFICATION REGARDING LOBBYING**

The Bidder or Offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under

grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**A19 PROHIBITION of SEGREGATED FACILITIES**

**A19.1 SOURCE**

41 CFR § 60

**A19.2 APPLICABILITY**

The contractor must comply with the requirements of the EEO clause by ensuring that facilities they provide for employees are free of segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. This clause must be included in all contracts that include the equal opportunity clause, regardless of the amount of the contract.

**Contract Types** – AIP sponsors must incorporate the Prohibition of Segregated Facilities clause in any contract containing the Equal Employment Opportunity clause of 41 CFR §60.1. This obligation flows down to subcontract and sub-tier purchase orders containing the Equal Employment Opportunity clause.

*Construction* – Construction work means construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

*Equipment* – On site installation of equipment such as airfield lighting control equipment meets the definition of construction and thus this provision would apply. This provision does not apply to equipment projects involving manufacture of the item at a vendor’s manufacturing plant. An example would be the manufacture of a SRE or ARFF vehicle.

*Professional Services* – Professional services that include tasks that qualify as construction work as defined by 41 CFR part 60. Examples include the installation of noise monitoring equipment.

*Property/Land* – Land acquisition contracts that include tasks that qualify as construction work as defined by 41 CFR part 60. Examples include demolition of structures or installation of boundary fencing.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of 41 CFR § 60.

**A19.3 CONTRACT CLAUSE**

**PROHIBITION OF SEGREGATED FACILITIES**

(a) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.

(b) “Segregated facilities,” as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Employment Opportunity clause of this contract.

**A20 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

**A20.1 SOURCE**

29 CFR part 1910

**A20.2 APPLICABILITY**

**Contract Types** – All contracts and subcontracts must comply with the Occupational Safety and Health Act of 1970 (OSH). The U.S. Department of Labor Occupational Safety and Health Administration (OSHA) oversees the workplace health and safety standards wage provisions from OSH.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of 20 CFR part 1910.

**A20.3 CONTRACT CLAUSE**

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

## **A21 PROCUREMENT OF RECOVERED MATERIALS**

### **A21.1 SOURCE**

2 CFR § 200.322

40 CFR part 247

Solid Waste Disposal Act

### **A21.2 APPLICABILITY**

Sponsors of AIP funded development and equipment projects must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Section 6002 emphasizes maximizing energy and resource recovery through use of affirmative procurement actions for recovered materials identified in the Environmental Protection Agency (EPA) guidelines codified at 40 CFR part 247. When acquiring items designated in the guidelines, the sponsor must procure items that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

**Contract Types** – This provision applies to any contracts that include procurement of products designated in subpart B of 40 CFR part 247 where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000.

*Construction and Equipment* – Include this provision in all construction and equipment projects.

*Professional Services and Property* – Include this provision if the agreement includes procurement of a product that exceeds \$10,000.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor's language must fully satisfy the requirements of 2 CFR § 200.

### **A21.3 CONTRACT CLAUSE**

#### **PROCUREMENT OF RECOVERED MATERIALS**

Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

- 1) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or
- 2) The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at [www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products](http://www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products).

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

- a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- b) Fails to meet reasonable contract performance requirements; or
- c) Is only available at an unreasonable price.

**A22 RIGHT TO INVENTIONS**

**A22.1 SOURCE**

2 CFR § 200, Appendix II(F)

37 CFR §401

**A22.2 APPLICABILITY**

**Contract Types** – This provision applies to all contracts and subcontracts with small business firms or nonprofit organizations that include performance of *experimental, developmental, or research work*. This clause is not applicable to construction, equipment, or professional service contracts unless the contract includes *experimental, developmental, or research work*.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of Appendix II to 2 CFR part 200.

**A22.3 CONTRACT CLAUSE**

**RIGHTS TO INVENTIONS**

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within 37 CFR §401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental, or research work.



**A23 SEISMIC SAFETY**

**A23.1 SOURCE**

49 CFR part 41

**A23.2 APPLICABILITY**

**Contract Types** – This provision applies to construction of new buildings and additions to existing buildings financed in whole or in part through the Airport Improvement Program.

*Professional Services* – Sponsor must incorporate this clause in any contract involved in the construction of new buildings or structural addition to existing buildings.

*Construction* – Sponsor must incorporate this clause in any contract involved in the construction of new buildings or structural addition to existing buildings.

*Equipment* – Sponsor must include the construction provision if the project involves construction or structural addition to a building such as an electrical vault project to accommodate or install equipment.

*Land* – This provision will not typically apply to a property/land project.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of 49 CFR part 41.

**A23.3 CONTRACT CLAUSE**

**A23.3.1 Professional Service Agreements for Design**

**SEISMIC SAFETY**

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard that provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a “certification of compliance” that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

**A23.3.2 Construction Contracts**

**SEISMIC SAFETY**

The Contractor agrees to ensure that all work performed under this contract, including work performed by subcontractors, conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction

Program (NEHRP). Local building codes that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety.

## **A24 TAX DELINQUENCY AND FELONY CONVICTIONS**

### **A24.1 SOURCE**

Sections 415 and 416 of Title IV, Division L of the Consolidated Appropriations Act, 2014 (Pub. L. 113-76), and similar provisions in subsequent appropriations acts.

DOT Order 4200.6 - Requirements for Procurement and Non-Procurement Regarding Tax Delinquency and Felony Convictions

### **A24.2 APPLICABILITY**

The sponsor must ensure that no funding goes to any contractor who:

- Has been convicted of a Federal felony within the last 24 months; or
- Has any outstanding tax liability for which all judicial and administrative remedies have lapsed or been exhausted.

**Contract Types** – This provision applies to all contracts funded in whole or part with AIP.

**Use of Provision** – The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of DOT Order 4200.6.

### **A24.3 CONTRACT CLAUSE**

#### **CERTIFICATION OF OFFERER/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS**

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

#### **Certifications**

- 1) The applicant represents that it is (  ) is not (  ) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- 2) The applicant represents that it is (  ) is not (  ) is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

#### **Note**

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government’s interests. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner, who will then notify

the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

**Term Definitions**

**Felony conviction:** Felony conviction means a conviction within the preceding twentyfour (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

**Tax Delinquency:** A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

## **A25 TERMINATION OF CONTRACT**

### **A25.1 SOURCE**

2 CFR § 200 Appendix II(B)

FAA Advisory Circular 150/5370-10, Section 80-09

### **A25.2 APPLICABILITY**

**Contract Types** – All contracts and subcontracts in excess of \$10,000 must address *termination for cause* and *termination for convenience* by the sponsor. The provision must address the manner (i.e. notice, opportunity to cure, and effective date) by which the sponsor’s contract will be affected and the basis for settlement (i.e. incurred expenses, completed work, profit, etc.).

#### **Use of Provision –**

*Termination for Default* – **MANDATORY TEXT.** Section 80-09 of FAA Advisory Circular 150/5370-10 establishes standard language for Termination for Default under a construction contract. The sponsor must not make any changes to this standard language.

*Termination for Convenience* – No mandatory text provided. The sponsor must include a clause for termination for convenience. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of Appendix II to 2 CFR part 200.

*Equipment, Professional Services, and Property* – No mandatory text provided. The sponsor may use their established clause language provided that it adequately addresses the intent of Appendix II(B) to Part 200, which addresses termination for fault and for convenience.

### **A25.3 CONTRACT CLAUSE**

#### **A25.3.1 Termination for Convenience**

#### **TERMINATION FOR CONVENIENCE (CONSTRUCTION & EQUIPMENT CONTRACTS)**

The Owner may terminate this contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy of Owner. Upon receipt of a written notice of termination, except as explicitly directed by the Owner, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

1. Contractor must immediately discontinue work as specified in the written notice.
2. Terminate all subcontracts to the extent they relate to the work terminated under the notice.
3. Discontinue orders for materials and services except as directed by the written notice.
4. Deliver to the Owner all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work, and as directed in the written notice.

5. Complete performance of the work not terminated by the notice.
6. Take action as directed by the Owner to protect and preserve property and work related to this contract that Owner will take possession.

Owner agrees to pay Contractor for:

- 1) completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
- 2) documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;
- 3) reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
- 4) reasonable and substantiated expenses to the Contractor directly attributable to Owner's termination action.

Owner will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the Owner's termination action.

The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this contract.

#### **TERMINATION FOR CONVENIENCE (PROFESSIONAL SERVICES)**

The Owner may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the Owner, the Contractor must immediately discontinue all services affected.

Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

#### **A25.3.2 Termination for Default**

##### **TERMINATION FOR DEFAULT (CONSTRUCTION)**

Section 80-09 of FAA Advisory Circular 150/5370-10 establishes conditions, rights, and remedies associated with Owner termination of this contract due to default of the Contractor.

##### **TERMINATION FOR DEFAULT (EQUIPMENT)**

The Owner may, by written notice of default to the Contractor, terminate all or part of this Contract if the Contractor:

1. Fails to commence the Work under the Contract within the time specified in the Notice- to- Proceed;
2. Fails to make adequate progress as to endanger performance of this Contract in accordance with its terms;
3. Fails to make delivery of the equipment within the time specified in the Contract, including any Owner approved extensions;
4. Fails to comply with material provisions of the Contract;
5. Submits certifications made under the Contract and as part of their proposal that include false or fraudulent statements; or
6. Becomes insolvent or declares bankruptcy.

If one or more of the stated events occur, the Owner will give notice in writing to the Contractor and Surety of its intent to terminate the contract for cause. At the Owner's discretion, the notice may allow the Contractor and Surety an opportunity to cure the breach or default.

If within [10] days of the receipt of notice, the Contractor or Surety fails to remedy the breach or default to the satisfaction of the Owner, the Owner has authority to acquire equipment by other procurement action. The Contractor will be liable to the Owner for any excess costs the Owner incurs for acquiring such similar equipment.

Payment for completed equipment delivered to and accepted by the Owner shall be at the Contract price. The Owner may withhold from amounts otherwise due the Contractor for such completed equipment, such sum as the Owner determines to be necessary to protect the Owner against loss because of Contractor default.

Owner will not terminate the Contractor's right to proceed with the Work under this clause if the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such acceptable causes include: acts of God, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, and severe weather events that substantially exceed normal conditions for the location.

If, after termination of the Contractor's right to proceed, the Owner determines that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the Owner issued the termination for the convenience the Owner.

The rights and remedies of the Owner in this clause are in addition to any other rights and remedies provided by law or under this contract.

#### **TERMINATION FOR DEFAULT (PROFESSIONAL SERVICES)**

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party [7] days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions

necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

- a) **Termination by Owner:** The Owner may terminate this Agreement in whole or in part, for the failure of the Consultant to:
1. Perform the services within the time specified in this contract or by Owner approved extension;
  2. Make adequate progress so as to endanger satisfactory performance of the Project; or
  3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the Owner determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the Owner issued the termination for the convenience of the Owner.

- b) **Termination by Consultant:** The Consultant may terminate this Agreement in whole or in part, if the Owner:
1. Defaults on its obligations under this Agreement;
  2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
  3. Suspends the Project for more than [180] days due to reasons beyond the control of the Consultant.

Upon receipt of a notice of termination from the Consultant, Owner agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If Owner and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Owner's breach of the contract.

In the event of termination due to Owner breach, the Engineer is entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. Owner agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.



**A26 TRADE RESTRICTION CERTIFICATION**

**A26.1 SOURCE**

49 USC § 50104

49 CFR part 30

**A26.2 APPLICABILITY**

Unless waived by the Secretary of Transportation, sponsors may not use AIP funds on a product or service from a foreign country included in the current list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR).

**Contract Types** – The trade restriction certification and clause applies to all AIP funded projects.

**Use of Provision – MANDATORY TEXT.** 49 CFR part 30 prescribes the language for this model clause. The sponsor must include this certification language in all contracts and subcontracts without modification.

**A26.3 SOLICITATION CLAUSE**

**TRADE RESTRICTION CERTIFICATION**

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror –

- 1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
- 2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- 3) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC Section 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

- 1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR or
- 2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list or
- 3) who incorporates in the public works project any product of a foreign country on such USTR list.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

**A27 VETERAN'S PREFERENCE**

**A27.1 SOURCE**

49 USC § 47112(c)

**A27.2 APPLICABILITY**

**Contract Types** – This provision applies to all AIP funded projects that involve labor to carry out the project. This preference, which excludes executive, administrative, and supervisory positions, applies to covered veterans (as defined under § 47112(c)) only when they are readily available and qualified to accomplish the work required by the project.

**Use of Provision** – No mandatory text provided. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor's language must fully satisfy the requirements of 49 USC § 47112.

**A27.3 CONTRACT CLAUSE**

**VETERAN'S PREFERENCE**

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

**APPENDIX 7**

**DISCRIMINATION COMPLAINT PROCEDURES/FORM**

**TUCSON AIRPORT AUTHORITY**  
**DISCRIMINATION COMPLAINT PROCEDURES**

**Scope.** These procedures are for complaints of discrimination other than employment discrimination. They apply to discrimination by airport employees, contractors, concessionaires, lessees, or tenants of the Airport, or at Airport facilities based upon race, creed, color, national origin, age, disability, sex, sexual orientation, gender identity, or creed, including but not necessarily limited to complaints under Title VI of the Civil Rights Act of 1964 and the Civil Rights Restoration Act of 1987. They cover any program or activity administered by the TAA.

**Rights.** Any person who feels that he or she has been subjected to discrimination on the basis of race, color, national origin, age, disability, sex, sexual orientation, gender identity, or creed has the right to file a complaint with the Airport. These procedures do not deny or limit the right of a complainant to file a formal complaint with an outside agency, such as the U.S. Department of Transportation or Federal Aviation Administration (FAA), or to seek private legal counsel regarding discrimination.

**PROCEDURE**

Complaints must be filed within 180 days after the alleged discriminatory event, must be in writing, and must be mailed (or emailed) to:

Bert Resimont  
Title VI Coordinator  
Tucson Airport Authority  
7250 South Tucson Blvd., Suite 300  
Tucson, AZ 85756  
Phone: (520) 573-4892  
Email: bresimont@flytucson.com

If a complaint is initially made by phone, it must be supplemented with a written complaint within 180 days after the discriminatory event. Accommodation will be provided upon request to individuals unable to file a written complaint due to a disability.

A copy of complaints alleging what amount to a Title VI violation by airport employees, contractors, concessionaires, lessees, or tenants, relative to the airports aviation activities, will be forwarded to the FAA within 15 days of receiving the alleged complaint. For information on filing a complaint with DOT/FAA contact the individual named above.

The Title VI Coordinator will conduct a complaint investigation and may meet with the complainant and respondent to clarify the issues, obtain additional information, and determine if an informal resolution might be possible. The Title VI Coordinator has 90 business days to conduct and complete the investigation and prepare an investigative report and providing the findings, in writing, to the complainant.

The Title VI Coordinator may decline to proceed with a complaint for one or more of the following reasons:

- The complaint is not supported by the regulation, is lacking in detail, or without merit, and cannot be considered to be grounded in fact.
- The complainant fails to respond to the repeated requests for additional information needed to process the complaint.
- Litigation has been filed by the complainant with the same basis and issues involved in the complaint. In such cases, the complaint should not be held in abeyance, but dismissed.
- The complainant withdraws the complaint.

**TUCSON AIRPORT AUTHORITY**  
**DISCRIMINATION COMPLAINT REFERRAL AND INTERNAL INVESTIGATION PROCESS**

**INTRODUCTION**

**SCOPE:** THE PROCEDURES ARE FOR COMPLAINTS OF DISCRIMINATION, OTHER THAN EMPLOYMENT DISCRIMINATION CLAIMS, BY AIRPORT EMPLOYEES, CONTRACTORS, CONCESSIONAIRES, LESSEES, OR TENANTS BASED UPON RACE, CREED, COLOR, NATIONAL ORIGIN, AGE, SEX, SEXUAL ORIENTATION, OR GENDER IDENTITY, INCLUDING BUT NOT NECESSARILY LIMITED TO COMPLAINTS UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AND THE CIVIL RIGHTS RESTORATION ACT OF 1987.

**COOPERATION WITH FAA:** THE TITLE VI COORDINATOR WILL PROMPTLY INVESTIGATE ALL DISCRIMINATION COMPLAINTS, INCLUDING THOSE REFERRED TO THE FEDERAL AVIATION ADMINISTRATION (FAA) FOR INVESTIGATION. IN INVESTIGATING A COMPLAINT THAT HAS BEEN REFERRED TO THE FAA, THE TITLE VI COORDINATOR WILL ENDEAVOR TO AVOID INTERFERING WITH THE FAA INVESTIGATION, WILL COOPERATE WITH THE FAA WHEN POSSIBLE, AND WILL SHARE FACTUAL INFORMATION WITH THE FAA.

**PROMPT INVESTIGATION:** THE TITLE VI COORDINATOR WILL MAKE EVERY EFFORT TO COMPLETE DISCRIMINATION COMPLAINT INVESTIGATIONS WITHIN SIXTY (60) CALENDAR DAYS AFTER THE COMPLAINT IS RECEIVED BUT RECOGNIZES THAT SOME INVESTIGATIONS WILL TAKE LONGER.

**PROMPT RESOLUTION OF DISPUTES:** THE TITLE VI COORDINATOR WILL QUICKLY AND FAIRLY RESOLVE DISPUTES WITH COMPLAINANTS, OR WITH CONTRACTORS, TENANTS, OR OTHER PERSONS, THROUGH ALL MEANS REASONABLE, AVAILABLE TO THE TITLE VI COORDINATOR.

**AVOIDING FUTURE DISCRIMINATION:** IN ADDITION TO TAKING ACTION WITH RESPECT TO ANY SPECIFIC INSTANCES OF DISCRIMINATION, TAA WILL IDENTIFY AND IMPLEMENT MEASURES TO REDUCE THE CHANCES OF SIMILAR DISCRIMINATION OCCURRING IN THE FUTURE.

**INTIMIDATION AND RETALIATION PROHIBITED:** TAA EMPLOYEES WILL NOT INTIMIDATE OR RETALIATE AGAINST A PERSON WHO HAS FILED A COMPLAINT ALLEGING DISCRIMINATION.

**WRITTEN COMPLAINTS REQUIRED:** IF A VERBAL COMPLAINT IS RECEIVED, THE COMPLAINANT SHOULD BE GIVEN A COPY OF THE AIRPORT'S DISCRIMINATION COMPLAINT PROCEDURES AND INSTRUCTED TO SUBMIT A WRITTEN COMPLAINT. ACCOMMODATION WILL BE PROVIDED UPON REQUEST TO INDIVIDUALS UNABLE TO FILE A WRITTEN COMPLAINT DUE TO A DISABILITY.

**DISCRIMINATION COMPLAINT PROCEDURES**

1. When a complaint is received, the Title VI Coordinator will immediately enter the complaint details into the TAA Complaint Log, create a file folder on the S Drive with the complainant's name, and file all complaint emails, forms, responses and investigation documents in this folder.
2. The Title VI Coordinator will promptly give email notification a complaint was received to the TAA President/CEO, VP of Finance, Legal, Communications, and copy the Director of Programs and Regulatory Compliance.
3. The Title VI Coordinator will provide written acknowledgment to the complainant within ten (10) business days.
4. The Title VI Coordinator will contact the complainant by phone as soon as possible to verify information in the complaint and explain the investigation process and timeline.
5. The Title VI Coordinator will investigate the complaint, try to solve the matter, and create an investigation report.
6. Within (15) days of receiving a written complaint, the Title VI Coordinator will forward a copy of the complaint to the FAA Airport Nondiscrimination Compliance Program Team, along with a statement describing all actions taken to resolve the matter and the results of such actions. The Title VI Coordinator will work with the Airport Nondiscrimination Compliance Program Team during this process.
7. The Title VI Coordinator will make every effort to complete discrimination complaint investigations within sixty (60) calendar days after the written complaint is received, but recognizes that some investigations may take longer. The Title VI Coordinator will document each investigation in an investigation report.
8. Upon completion of the investigation, the Title VI Coordinator will issue either a closure letter or a letter of finding. A closure letter summarizes the allegations and states that there was no finding of a Title VI violation and that the investigation will be closed. A letter of finding summarizes the allegations and investigation findings and explains whether any disciplinary action, additional training, or other action will occur.
9. If the complainant disagrees with the conclusion of the investigation, the complainant may appeal in writing to the Tucson Airport Authority. The written appeal, including all arguments, evidence, and documents supporting the appeal, must be received within fourteen (14) business days of the decision letter. The Title VI Coordinator will issue a final written decision in response to the appeal within thirty (30) business days. The Tucson Airport Authority's decision is final.
10. Copies of the complaint, summary of the investigation report, any response, and the Tucson Airport Authority's decision letter(s) will be sent to the FAA.



<https://www.flytucson.com/taa/nondiscrimination-policies/ada-disability-policy-and-complaint-procedure/>

**WEBSITE ADA COMPLAINT PPROCEDURE/FORM**

## ADA / Disability Nondiscrimination Policy

The Tucson Airport Authority (TAA) assures that no person is excluded from participation, denied benefits of, or subjected to discrimination at Tucson International Airport (TUS). Any person, or his/her representative, who believes that he/she or any specific class of persons has been subjected to discrimination or retaliation based on their disability may file a complaint with TAA. The complaint may relate to discrimination by airport employees, contractors, concessionaires, lessees, or tenants of the airport, or be related to a facility at the airport.

If you have reached this page and do not have a complaint, but a question about navigating the terminal, accessing Ground Transportation or anything generally related to Tucson International Airport (TUS), please use this Contact Form. You should have a response within 48 hours.

## Complaint Procedure

Complaints received by TUS staff are forwarded to the ADA Coordinator. The Coordinator maintains a record of the complaint and ensures the complaint is complete. If it is not complete, the ADA Coordinator will require the complainant to submit additional information before officially accepting the complaint. Complaints should be submitted using the the form below.

Any person who believes they have been aggrieved by an unlawful discriminatory practice may file a complaint using the online form below or, if you prefer you may download it **here**, print it, complete it, sign it and email (click on title below), mail or fax it to:

**ADA Coordinator**

Tucson Airport Authority  
7250 S. Tucson Blvd., Suite 300  
Tucson, AZ 85756

Individuals who believe they have been subjected to discrimination are required by federal regulations to submit the complaint no later than 180 calendar days from the date of the alleged incident.

If a complaint is initially made by phone, it must be supplemented with a written complaint. Accommodation will be provided upon request to individuals unable to file a complaint due to disability. Upon request, TAA will make available language assistance for persons with limited English proficiency as needed to file a complaint. For accommodations or language assistance, contact the TAA Title VI Coordinator at (520) 573-8100. A copy of complaints alleging what amounts to an ADA violation by airport employees, contractors, concessionaires, lessees, or tenants, relative to the airports aviation activities, will be forwarded to the Federal Aviation Administration.

### ADA Complaint Form

**Complainant Name \***

First

Last

**Address \***

Street Address

Address Line 2

City

State / Province / Region

ZIP / Postal Code

Country

United States 

**Home Phone \***

**Business Phone**

### TAA Service, Program or Facility Allegedly in Violation

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**Date Alleged Violation Occurred \***

mm/dd/yyyy



**Has this case been filed with the Department of Justice or other government agency or court? \***

Yes

No

**Comments & Signature**

---

**Other Comments**

**Digital Signature (Type Your Name) \***

NOTE: Please be advised that TAA complies with the Arizona Public Records Law, and that information provided in this form may be subject to public disclosure. Furnishing the requested information is voluntary, except that the failure to provide complete information may result in delay or in our being unable to resolve your complaint fully.

**APPENDIX 8**

**MINORITY BUSINESS COMMUNITY OUTREACH**

**OUTREACH EVENTS**

**FY 2021:**

- ❖ ADOT DBE and Small Business Conference
- ❖ AzAA Aviation Day

**FY 2022:**

- ❖ Arizona NIGP Copper Chapter Spring Procurement Reverse Tradeshow
- ❖ Arizona NIGP Copper Chapter Fall Procurement Reverse Tradeshow
- ❖ ADOT DBE and Small Business Conference
- ❖ AzAA Annual Fall Conference

**FY 2023:**

- ❖ Arizona NIGP Copper Chapter Spring Procurement Reverse Tradeshow
- ❖ Arizona NIGP Copper Chapter Fall Procurement Reverse Tradeshow
- ❖ ADOT DBE and Small Business Conference
- ❖ ADOT DBE Joint Task Force Virtual Meeting with DBEs

**APPENDIX 9**

**UNLAWFUL DISCRIMINATION POSTERS**

**Tucson International Airport** Unlawful Discrimination Poster Locations:

Public Locations: 17    Non-Public Locations: 8    TOTAL: 25

1. Concourse A – Info Desk\*
2. Concourse B – Info Desk\*
3. 3<sup>rd</sup> Floor Lobby – Administration Offices
4. 3<sup>rd</sup> Floor Employee Breakroom – Administration Offices
5. 2<sup>nd</sup> Floor public notice case\*
6. Concourse A – Airside Food Court\*
7. Concourse B – Airside Food Court\*
8. Concourse A – Pre-check Restaurant (Barrio Brewing Co.)\*
9. Rental Car Building\*
10. Custodial Office
11. Concourse A – Re-composure Area\*
12. Concourse B – Re-composure Area\*
13. Fire Department
14. Badging Office\*
15. Police Department
16. Warehouse
17. Maintenance
18. Elevators ( 3 - Inside Terminal)\*
19. Elevators (3 - Rental Car Parking Garage)\*
20. Terminal C\*\*
21. Old Control Tower

\* Public Access Location

\*\* Temporarily Closed

**NOTE:** Consultants and/or contractors will conspicuously display the FAA provided nondiscrimination posters at airport construction project locations.

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## Unlawful Discrimination

It is unlawful for airport operators and their lessees, tenants, concessionaires and contractors to discriminate against any person because of race, color, national origin, sex, creed, or disability in public services and employment opportunities. Allegations of discrimination should be promptly reported to the Airport Manager or:

Federal Aviation Administration  
Office of Civil Rights, ACR-1  
800 Independence Avenue, S.W.  
Washington, D.C. 20591

Federal regulations on unlawful discrimination are available for review in the Airport Manager's Office.

**Coordinator:** Bert Resimont  
**Phone:** (520) 573-4892  
**Address:** 7250 S. Tucson Blvd., Suite 300  
Tucson, AZ 85756

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## Discriminacion Illegal

Se prohíbe a los operadores de aeropuertos y a sus arrendatarios, inquilinos, concesionarios y contratistas discriminar contra cualquier persona por motivo de raza, color, nacionalidad de origen, sexo, creencias religiosas, impedimento físico o discapacidad en lo que respecta a servicios públicos y oportunidades de empleo. Las alegaciones de discriminación deberán ser dirigidas inmediatamente al Administrador del Aeropuerto o a:

Federal Aviation Administration  
Office of Civil Rights, ACR-1  
800 Independence Avenue, S.W.  
Washington, D.C. 20591

Los reglamentos sobre discriminación ilegal están a la disposición de los interesados para su examen en la oficina del Administrador del Aeropuerto.

**Coordinador:** Bert Resimont  
**Teléfono:** (520) 573-4892  
**Dirección:** 7250 S. Tucson Blvd., Suite 300  
Tucson, AZ 85756





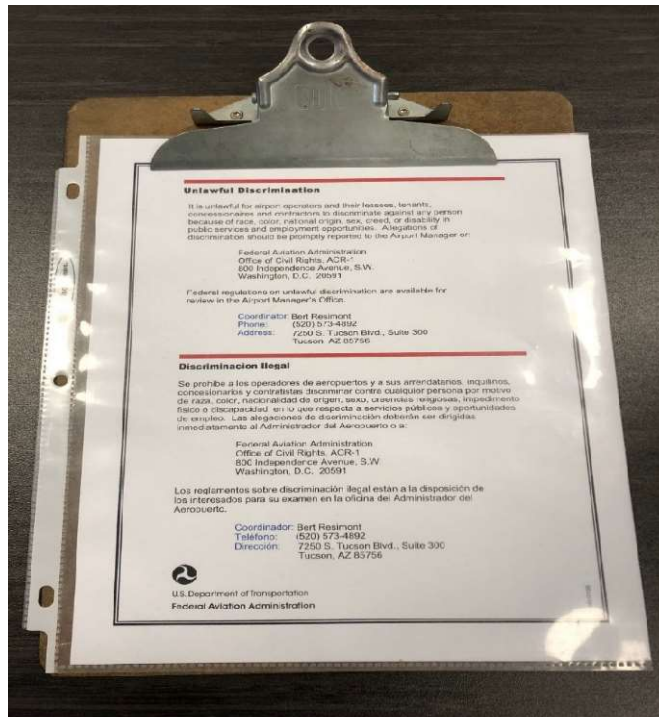
### Concourse A – Info Desk



### Concourse B – Info Desk

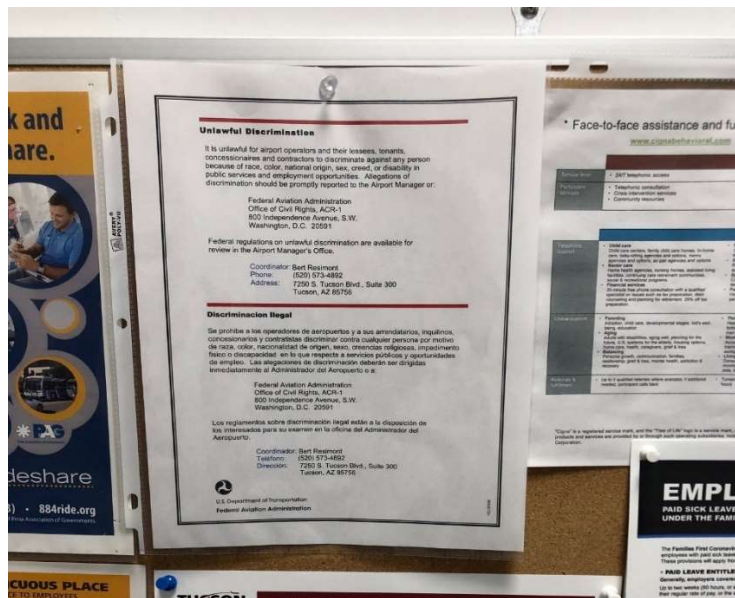
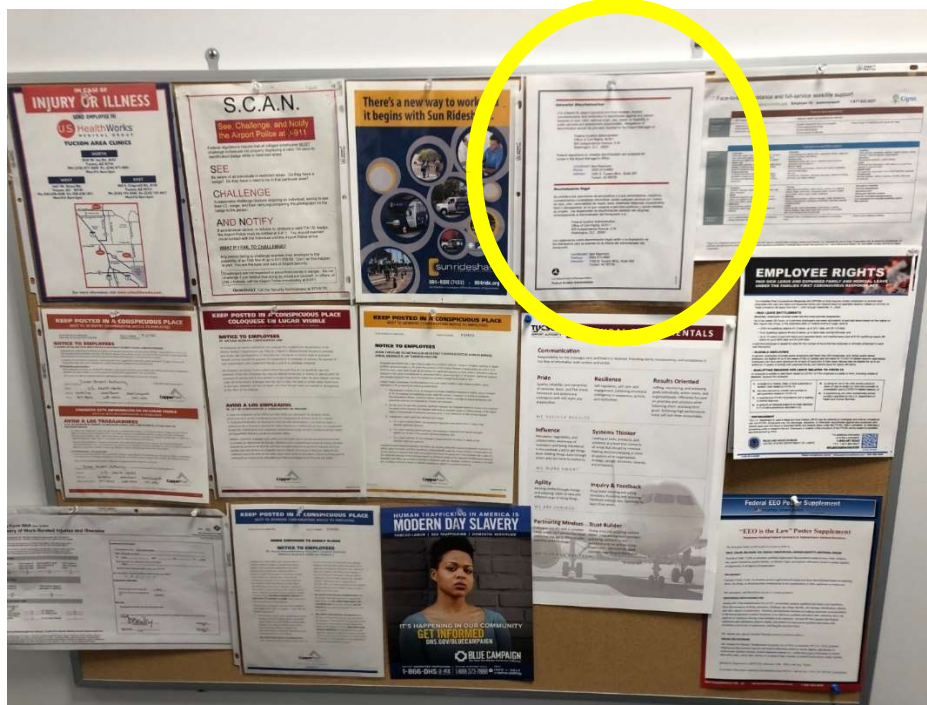


## Terminal 3<sup>rd</sup> Floor Lobby



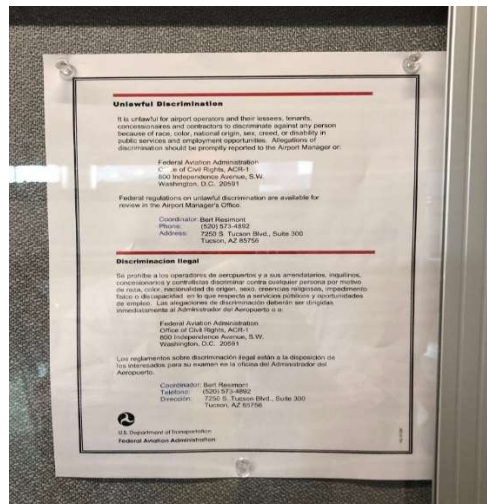
Close-Up

Outside Employee Break Room - 3<sup>rd</sup> Floor



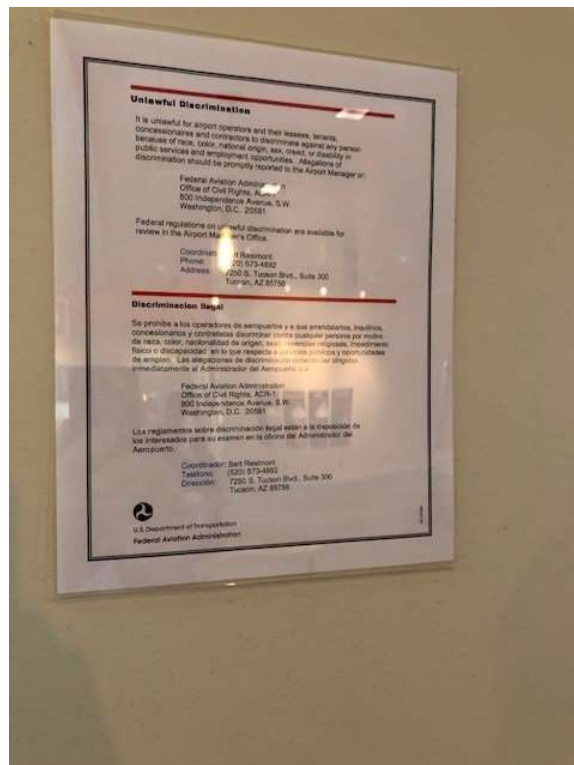
Close-Up

## 2<sup>nd</sup> Floor Public Notice Info Case



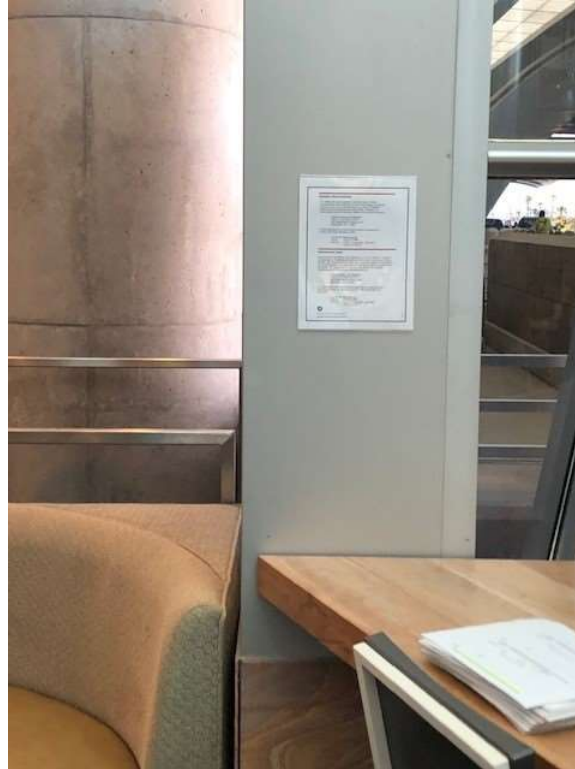
Close-up

## Concourse A – Airside Food Court





## Concourse A – Pre-Check Food Court

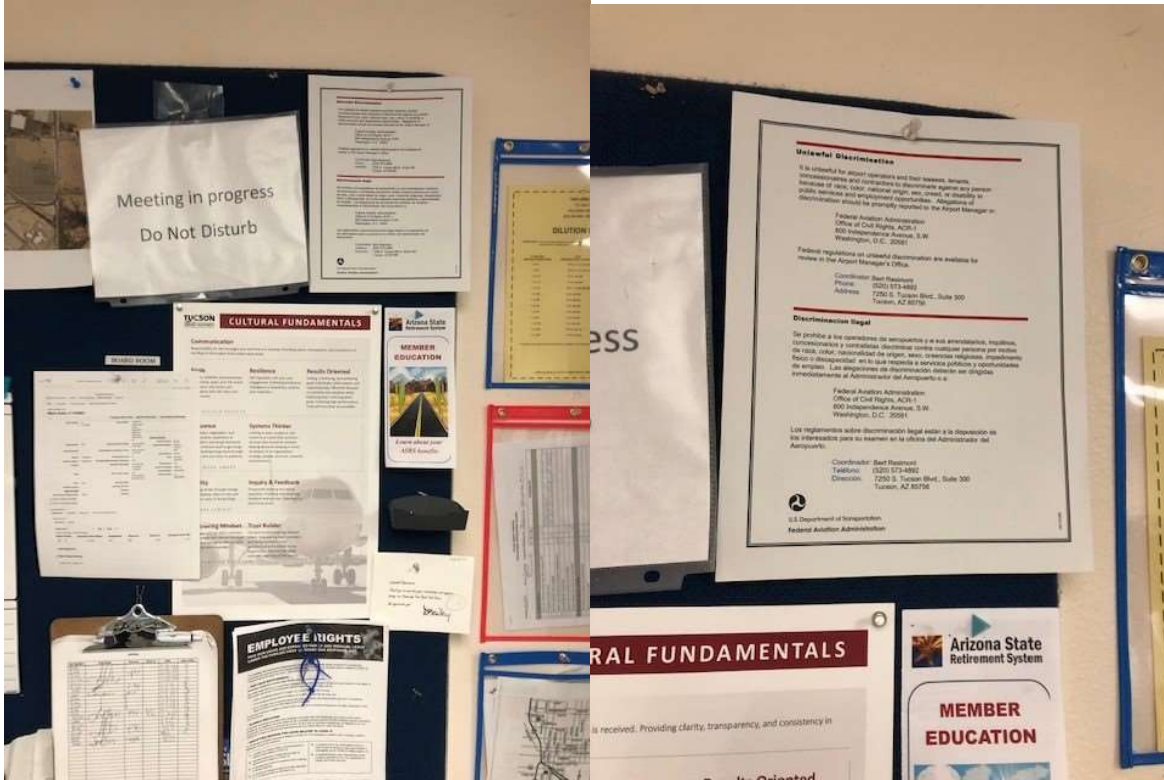


## Rental Car Building





## Custodial Office



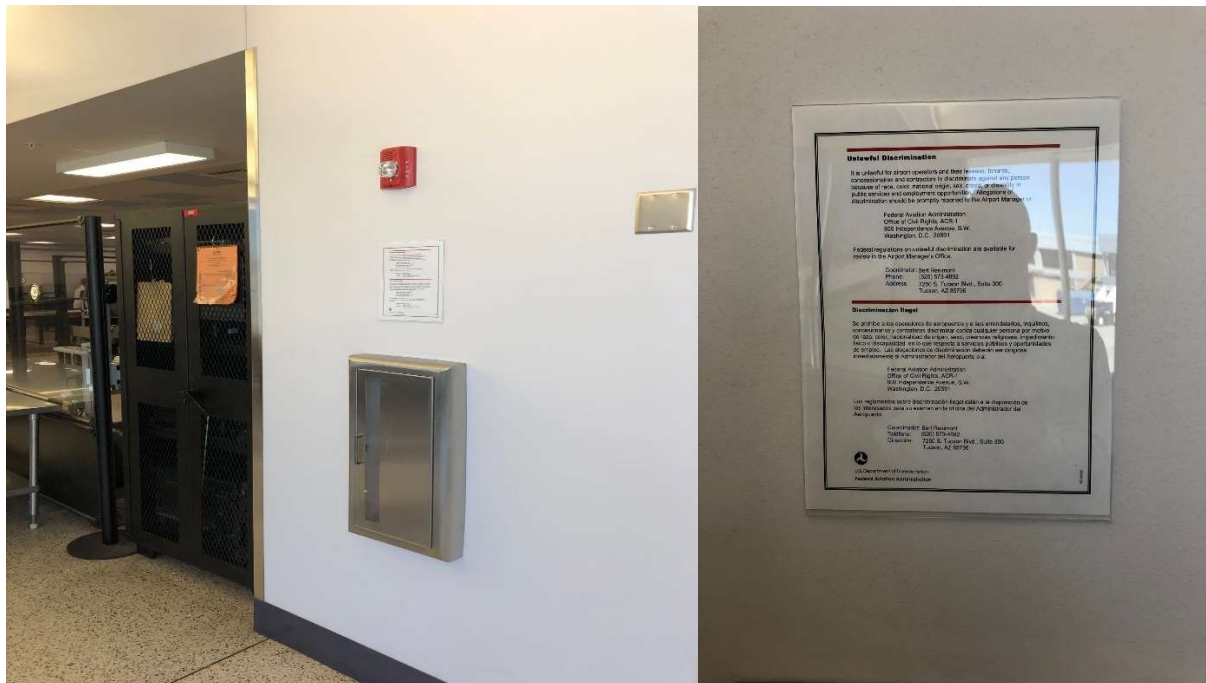
Closeup

Re-Composure Area – Side A



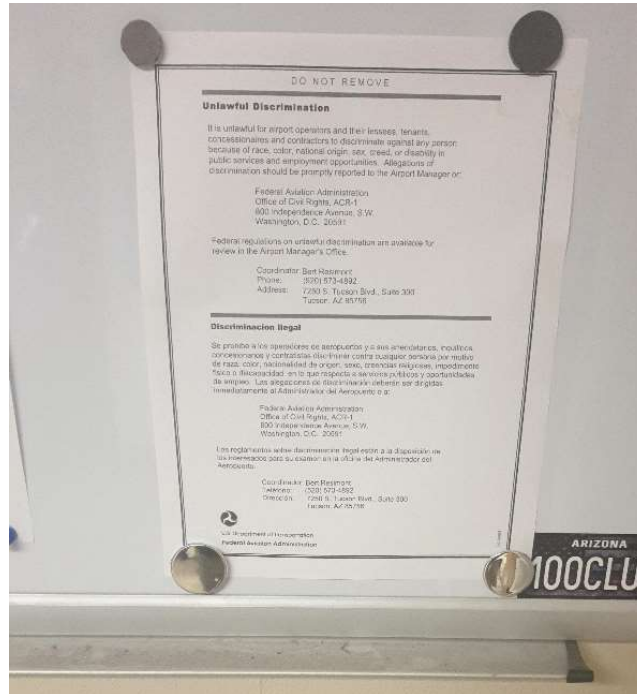
Closeup

Re-Composure Area – Side B



Closeup

## Fired Department Information Board



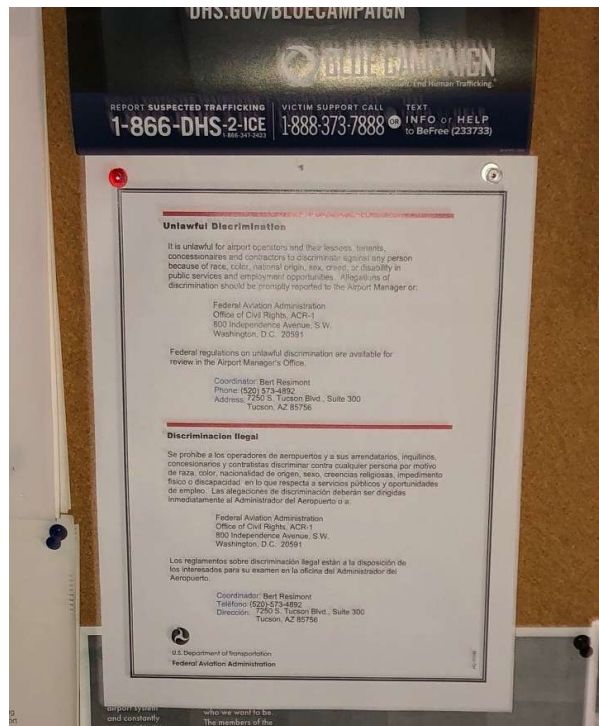
## Badging Office



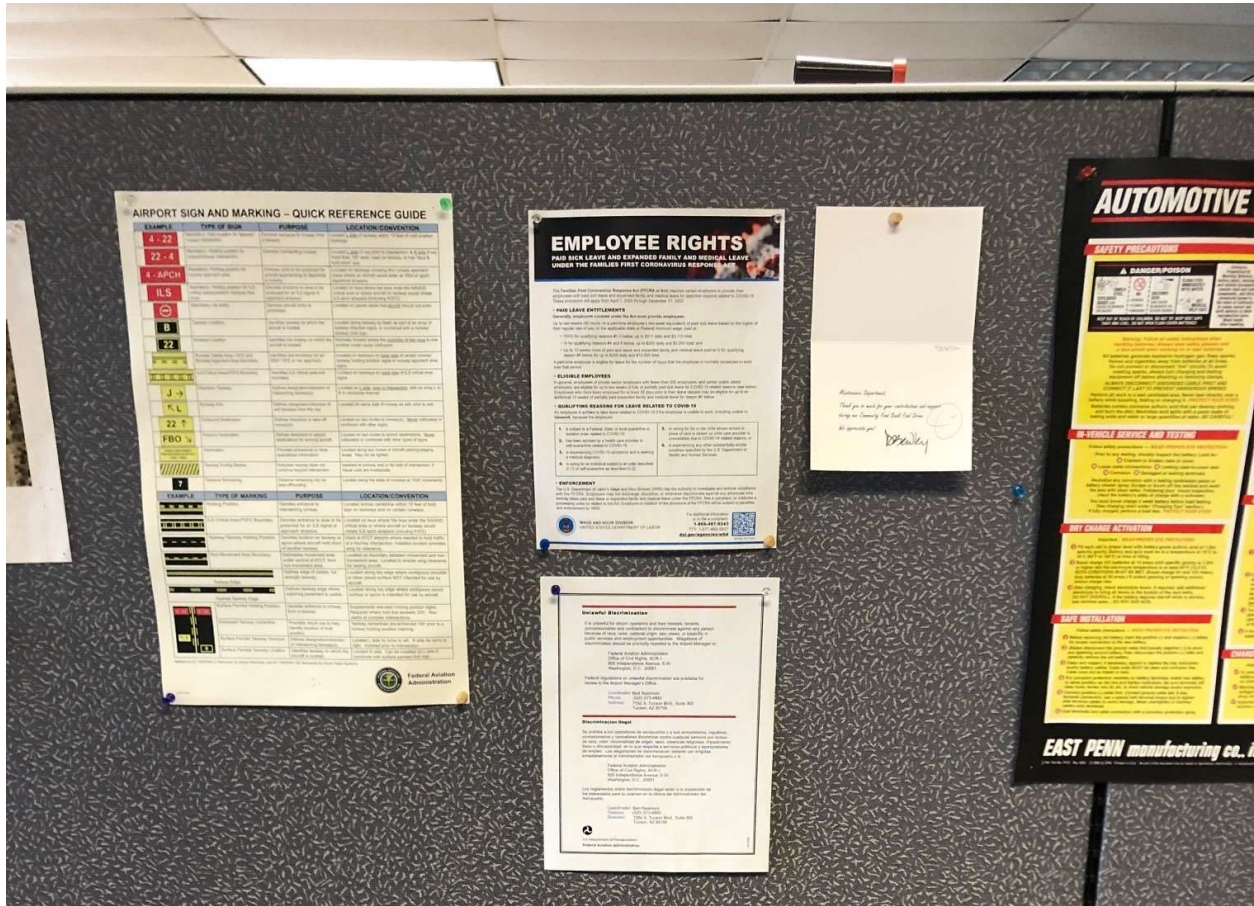
Police Department



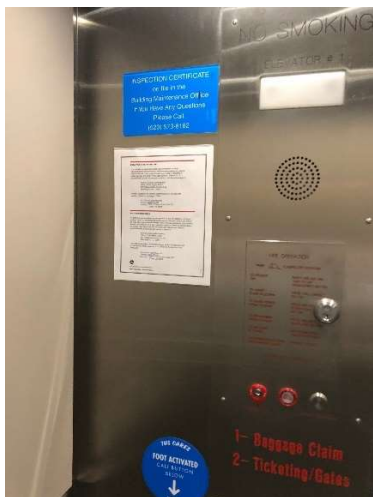
Warehouse



Maintenance



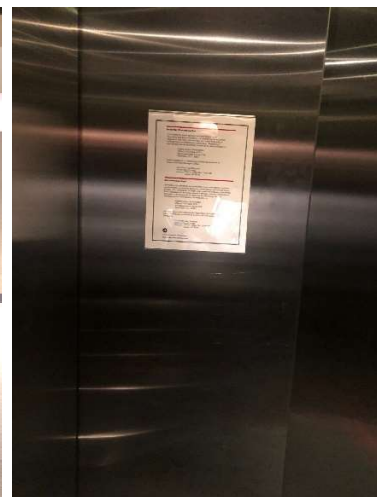
Elevators (Inside Terminal)



Admin Elevator



Landside A Elevator



Landside B Elevator

### Elevators (Rental Car/Parking Garage)



Elevator #1

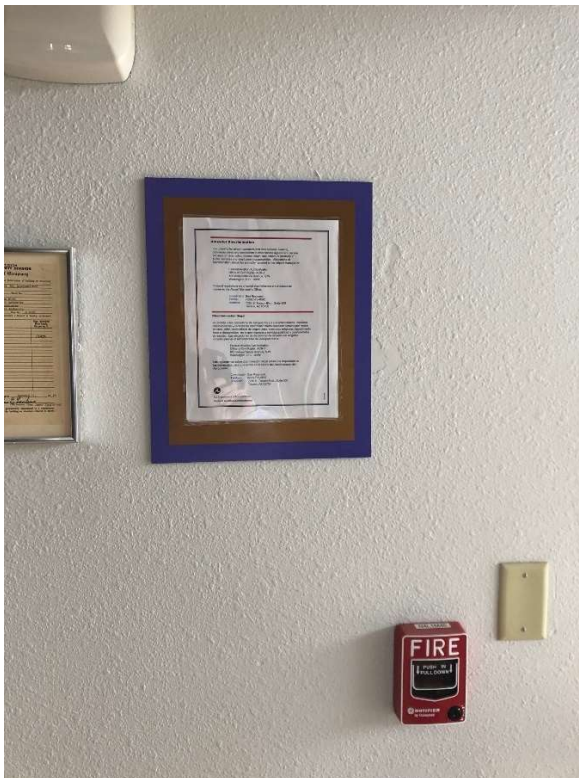


Elevator #2

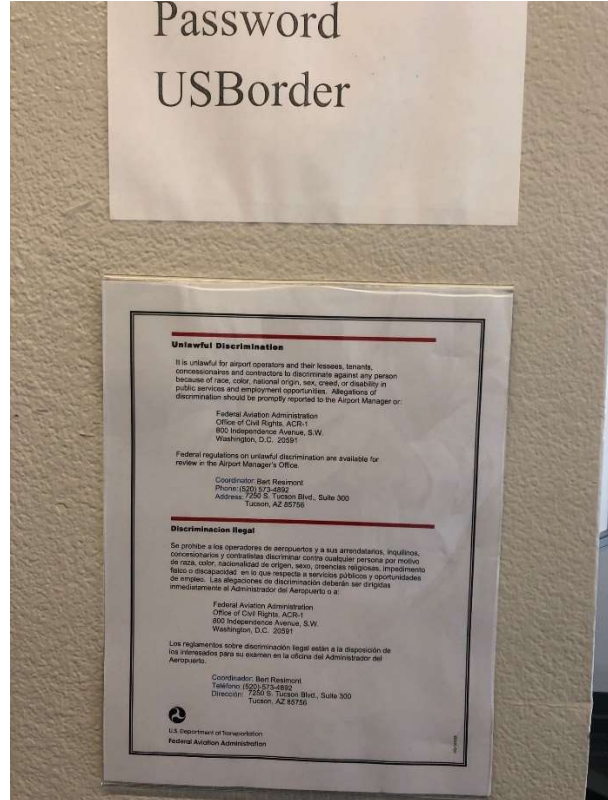
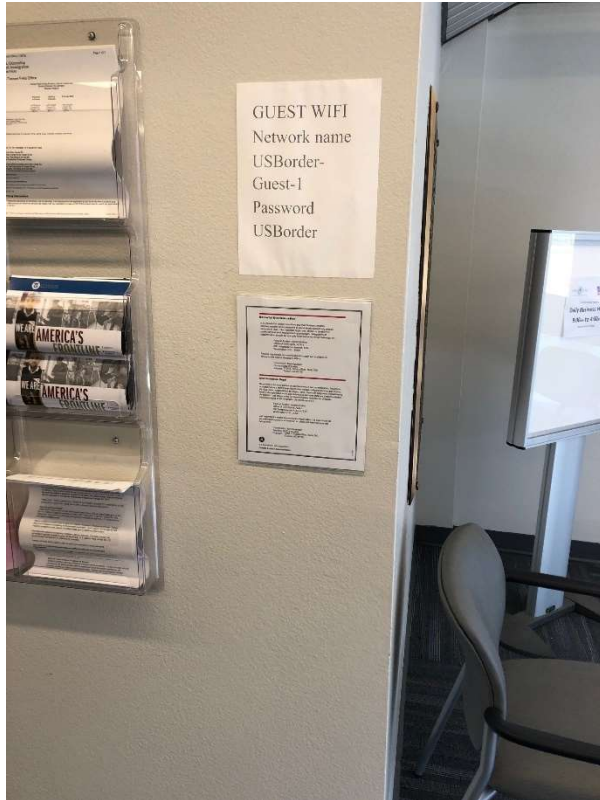


Elevator #3

### Terminal C



## Old Control Tower



**Ryan Airfield** Unlawful Discrimination Poster Locations:

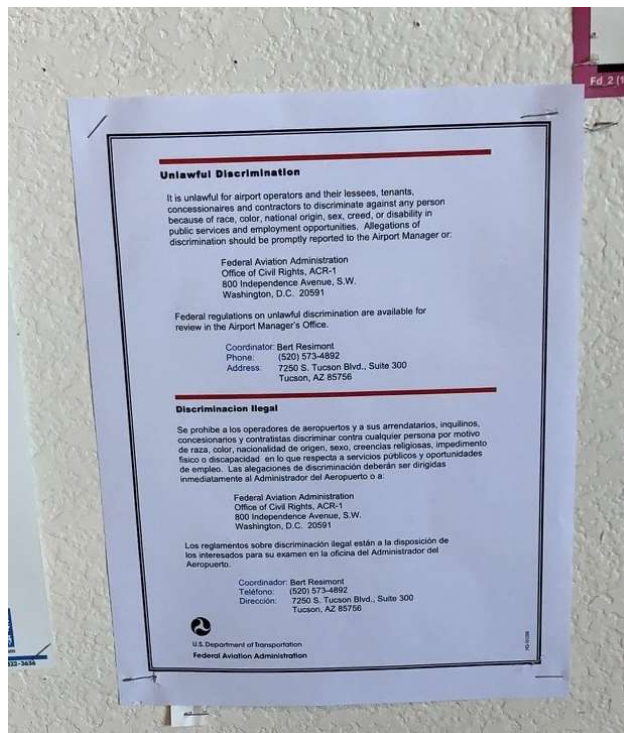
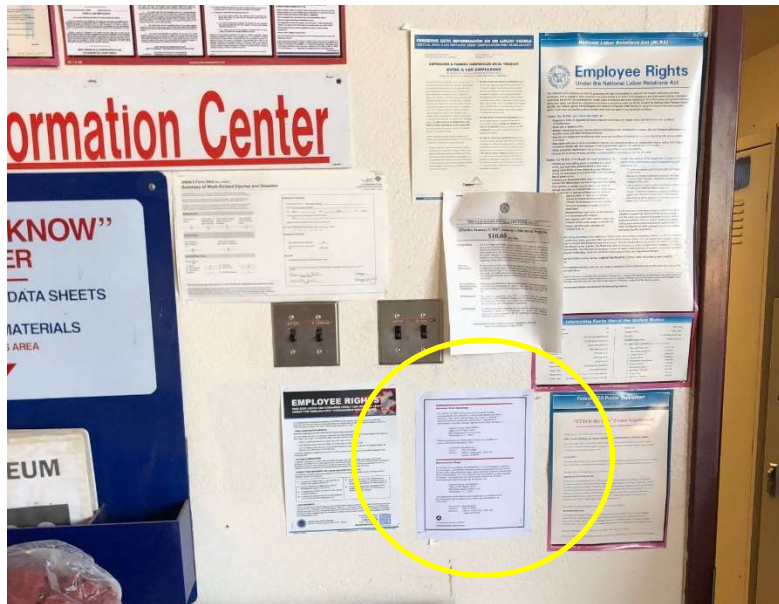
Public Locations: 1    Non-Public Locations: 1    TOTAL: 2

1. Notice Board/Case – Outside Administrative Office\*
2. Maintenance Office Notice Board

\* Public Access Location

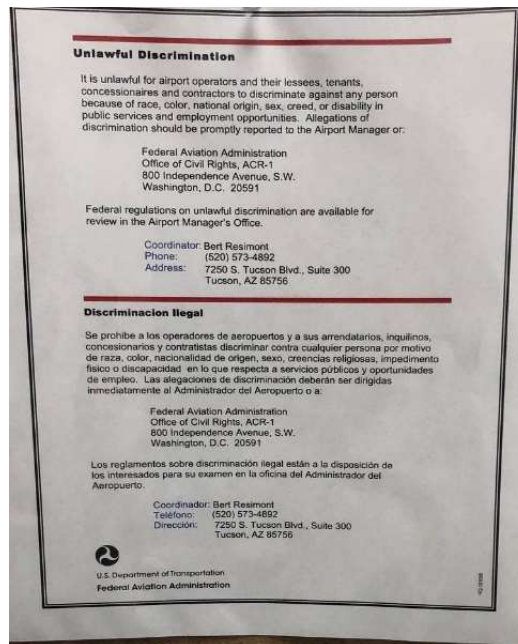


## Ryan Airfield Maintenance



Close-up

## Ryan Airfield Admin Building



Close-up

**APPENDIX 10**

**COMMUNITY STATISTICS**

**LIMITED ENGLISH PROFICIENCY (LEP)**

**COMMUNITY STATISTICS**

The Tucson traveling community is defined as the State of Arizona with a focus on the four (4) most proximate counties – Pima, Cochise, Pinal, and Santa Cruz. TAA has identified the following facts about the community composed of these four (4) counties and the state.

**Low Income Communities:** A low-income area is an identifiable group of persons living in geographic proximity whose median household income is at or below the Department of Health and Human Services poverty guidelines. According to U.S. Census Reports, the overall poverty level for the state is approximately 12.8%. The state rate is slightly higher than the national poverty rate, which is approximately 11.4%. Based on the most recent population survey reported by U.S. Census Bureau (source: American FactFinder, U.S. Census Bureau), TAA found the poverty rate in Pima County to be 14.6%, Cochise County 16.8%, Pinal County 9.9%, and Santa Cruz 21.6%.

**Minority Communities:** Demographic data for race, color, and national origin was evaluated to identify minority communities and populations in each Affected Community. The demographic composition by race, color, or national origin for the specific Affected Communities are as follows. The minority population of the four (4) most proximate counties is 44.95% of the counties total population. Santa Cruz County has the highest minority population at 66.58%. The state’s overall minority population as a percentage of the total population is estimated to be 46.63%.

**Limited English Proficiency:** Affected Community demographic data for languages spoken was evaluated to identify limited English proficiency (LEP) communities and populations. The following languages are the top 5, in descending order, spoken in homes (by individuals who believe they “do not speak English well”) in the state and the prescribed area (source: 2015 Census Bureau):

STATE OVERALL		4 COUNTY COMBINATION	
Spanish	80.86%	Spanish	
Navajo	2.48%	Chinese	
Chinese	2.47%	Navajo	
Vietnamese	2.3%	Vietnamese	
Arabic	1.2%	Arabic	

Top Non-English Language in State Public Schools (U.S. Dept. of Education, SY 2015-16 Consolidated State Performance Reports Part I - Arizona)	
Spanish	75.6%
Arabic	2%
Vietnamese	.8%
Navajo; Navaho	.7%
Somali	.6%

NOTE: This TAA program does not need to be updated as the data changes throughout its 3-year period. Incremental adjustments will be made to processes as needed to address any significant changes in data. The information is updated through the U.S. Census and federal statistical data.

**LIMITED ENGLISH PROFICIENCY (LEP)**  
**EXECUTIVE ORDER 13166**

In Pima County and surrounding areas, TAA has identified the following languages for which a significant population of LEP persons may exist: Spanish.

Source: American Fact Finder, U.S. Census Bureau

**Language Assistance Measures:**

As stated in DOT Notice 2001-8696 (FR22ja01-233) transportation is considered an essential service to participation in modern society. Therefore, TAA has made the following plans to provide translation services free of charge to ensure that individuals with LEP have access to the benefits of the airport:

1. Public meeting notices will be translated into Spanish and will be posted on TAA's website and will be displayed by the center core elevator entrances on Levels 1, 2, and 3 of the Tucson International Airport Terminal. Translated written materials or arrangements for a translator will be made available upon request. Requests must be made through the Management Department.
2. Information regarding translation services can be obtained at TAA's public information counters on Level 1 of the terminal; TAA's Administrative Office Reception on Level 3 of the terminal; or by calling the Airport Communication Center at (520) 573-8182.
3. "I Speak" cards will be handed out throughout the terminal to assist with language identification. Once correct language is identified, contact Airport Communication Center at (520) 573-8182 to initiate translation services.
4. Terminal staff will be trained to use Google Translate to help identify customer's need, then connect the customer with translation services.
5. TAA website will provide a link to essential services translated into Spanish.
6. TAA will review internal/external signage in and around the terminal to evaluate need for translating signage into Spanish.
7. TAA has Interpreter Services available to provide in person and written translation services for staff and public meetings.
8. TAA to build a list of bilingual and multilingual employees, the languages they speak, and their associated office telephone numbers.
9. All appropriate staff members will receive training regarding TAA's responsibilities for providing Limited English Proficiency (LEP) services and the resources which TAA has available and instruction on how to fulfill these responsibilities.

**APPENDIX 11**  
**SELF ASSESSMENTS**

## ADA/Section 504 Assessment for TUCSON INTERNATIONAL (TUS)

Main	DBE/ACDBE Programs	DBE Goals & Reports	ACDBE Goals & Reports	Title VI	ADA	Compliance Reviews	Complaints	Inquiries	Assessments
------	--------------------	---------------------	-----------------------	----------	-----	--------------------	------------	-----------	-------------

[Refresh](#)

Assessment Type:	ADA/Section 504 Assessment
Status:	<p><b>Under Review</b></p> <p>1 action items pending submission          4 action items pending review</p>
Created:	6/14/2022 by Melissa Wu
Assigned Contact:	Bert Resimont ( <a href="#">change contact</a> )
Submitted:	7/18/2022 by Bert Resimont

### Coordinator

1	28 CFR § 35.107; 49 CFR § 27.13	Has an employee been designated to coordinate compliance efforts for requirements under ADA/Section 504?
Yes		

### Complaints

2	28 CFR § 35.107; 49 CFR §§ 27.13, 27.121	Are Airport ADA/Section 504 complaint procedures publicized on the airport website, and do they include filing instructions and the name/contact information of ADA/Section 504 Coordinator?
Yes		
3	28 CFR § 35.107; 49 CFR §§ 27.13, 27.121	Are all complaint records kept on file for a minimum of 1 year, with at least a summary of each complaint kept for a minimum of 5 years?
Yes		

### Notice

4	28 CFR § 35.106; 49 CFR § 27.15	Do all published public information materials (notifications, posters, brochures, website) include notice that there will be no discrimination on the basis of disability?
Yes		

### Poster

5	49 CFR § 21.9(d)	Does the Airport display the FAA "Unlawful Discrimination" poster conspicuously in the main public areas of the Airport?
Yes		




### Self-Assessment

6	28 CFR § 35.105; 49 CFR § 27.11	Do the Airport policies and procedures require regular self-assessments to determine if facilities, services, policies, and practices are accessible to people with disabilities, and was a self-assessment completed within at least the last 3 years?
Yes		

### Contractual Agreements

7	49 CFR § 27.7; 28 CFR § 35.130	<b>ALL CONTRACTS:</b> Do Airport contracts include provisions addressing nondiscrimination on the basis of disability? The provisions are required in all concessionaire tenant agreements, airline leases, ground transportation license agreements, and similar contracts for use of the airport facility.
Yes		
8	49 CFR § 27.72; 14 CFR § 382.99	<b>AIR CARRIERS Contracts:</b> Do leases or other airport contracts with airlines, MOU's, or agreements include language addressing boarding and deplaning assistance and boarding equipment ownership and maintenance responsibilities?
Yes		




### Communication

9	28 CFR § 35.160; 28 CFR Part 36; 49 CFR § 27.71	<b>Does the airport and/or its tenants furnish appropriate auxiliary aides and services to ensure effective communication?</b>
Partial		
TAA is currently updating the EVIDS and PA systems throughout the terminal complex which will address regulations. This project is expected to be completed by end of 2022.		
<b>Action Items</b>		
Request: We will follow up this item closer to the projected completion date, by the end of 2022.		
Status: <b>Accepted / Closed</b>		
Created: 8/3/2022 by Melissa Wu		
Due Date: 12/5/2022		
Completed: 9/9/2022		
Response: TUS has completed the upgrade of our EVIDS and PA systems throughout the terminal complex. The EVIDS are only a visual display, which includes scrolling text at the bottom of the screen for visual paging and other messages. The PA systems are also operating. Pages are done by PA system and text on EVIDS.		
Review Comments: Does the EVIDs make announcements? Or are they specifically only visual display? If not, has there been any updates to the PA systems to ensure effective communication?		
	 EVID 1 (10/12/2022 by Bert Resimont) This pic is an example of all visual displays in the airport. The text scroll on the bottom is for paging, emergency notifications, etc.	<a href="#">view</a>
	 EVID Pic 2 (10/12/2022 by Bert Resimont) This pic is an example of all visual displays in the airport. The text scroll on the bottom is for paging, emergency notifications, etc.	<a href="#">view</a>
	 EVID Pic 3 (10/12/2022 by Bert Resimont) This pic is an example of all visual displays in the airport. The text scroll on the bottom is for paging, emergency notifications, etc.	<a href="#">view</a>

### Signage

10	28 CFR § 35.107; 49 CFR §§ 27.13, 27.121; 1991 ADA Standards for Accessible Design (ADAAS) 4.1.2(7); 4.1.3; 4.6.4; 4.30.7; A4.30	<b>Complies with height, symbols, finish, and location?</b>
Yes		



11	1991 ADAAS 4.1.2; 4.1.3; 4.3.2; 4.6.2; 4.6.3; 4.6.5	Meet requirements for number of accessible parking spaces at each location and for designating the closest spaces to the accessible entrance as the accessible spaces?
<p>Partial</p> <p>TAA reviewed parking and all spaces were in compliance except for one area of our second level in the parking garage. TAA has issued a work order to address the deficiency to add ADA van accessible spaces. TAA expects work to complete this project by September 30, 2022.</p> <hr/> <p><b>Action Items</b></p> <p>Request: We will follow up this item closer to the projected completion date, by the end of 2022. <span style="float: right; border: 1px solid black; padding: 2px 5px;">Withdraw</span></p> <p>Status: <b>Submitted, Pending Review</b></p> <p>Created: 8/3/2022 by Melissa Wu          Due Date: 12/5/2022          Completed: 9/2/2022          Response: 11/4/2022 by Bert Resimont</p> <p>Response: Please see the attached document for the breakdown of our ADA parking spaces. There are vehicles currently in the spaces and we have been waiting for them to leave to take pics.</p> <p> <a href="#">New ADA Parking Space - TUS (11/4/2022 by Bert Resimont) <i>New ADA Parking Space - TUS</i></a> <span style="float: right;">view</span></p> <p> <a href="#">TUS ADA Parking Spaces Breakdown (9/30/2022 by Bert Resimont) <i>TUS ADA Parking Spaces Breakdown</i></a> <span style="float: right;">view</span></p> <p>Request: For any parking lot that is in use, it needs to include accessible standard and van parking spaces. Other parking lots with additional parking spaces than required cannot supplement the required amount of accessible parking spaces in each lot. Please provide us with a plan and estimated date of completion.</p> <p>Status: <b>Submitted, Pending Review</b></p> <p>Created: 10/25/2022 by Melissa Wu          Due Date: 11/7/2022          Completed: 11/4/2022          Response: 11/4/2022 by Bert Resimont</p> <p>Response: See the attached pic of the new ADA parking space we were able to install. The delay was waiting for other vehicles to leave the space for the transition.</p> <p> <a href="#">New ADA Parking Space - TUS (11/4/2022 by Bert Resimont) <i>New ADA Parking Space - TUS</i></a> <span style="float: right;">view</span></p>		




### Loading / Unloading Zones

12	1991 ADAAS 4.6.6	Meet requirements for accessible zone location and design, including for a 60-inch wide access aisle, a pull up space separate from the traffic lane, and connection to curb ramps?
Yes		

## Telephones

13	1991 ADAAS 4.1.3(17); 4.31	Meet requirements for text telephone, mounting height, clear floor space, volume control, etc.?
Partial		
TUS currently has 20 closed circuit courtesy house phones throughout the terminal complex. TAA will be scoping a project to address any ADA telephone deficiencies. TAA anticipates completion of this project by end of calendar year 2023.		
<b>Action Items</b>		
Request: We will follow up on this item closer to the projected date of completion, by the end of 2023.		<a href="#">Respond</a>
Status: <b>OPEN / Pending Response</b>		
Created: 8/3/2022 by Melissa Wu		
Due Date: 12/5/2023		
<a href="#">Attach Document</a> 📎		

## Circulation Path

14	<p><b>1991 ADAAS</b>  4.1.2; 4.1.3;  4.1.6; 4.2; 4.3;  4.4; 4.5; 4.7;  4.8; 4.10; 4.13;  4.14</p>	<p><b>Accessible route coincides with the circulation path for the general public and meets requirements regarding protruding objects, slope, etc.? If there is a separate accessible path/entrance, then directional signage to the accessible path is provided?</b></p>
<p>Partial</p>		
<p>TUS has two AED wall mounted units that exceed the 4" standard. TAA is working with staff to either relocate or recess the cabinets to meet standards. TAA expects work will be completed by September 30, 2022.</p> <p>Slope of ramps on both concourses were measured. Concourse A is 8.7% (5 degrees) slope. The FIS ramp is 7.4% (4 degrees) slope. Concourse B – Gate A4 is 7.8% (4.3 degrees) slope and Concourse B – Security Screening Exit is 5.4% (less than 4 degrees) slope. All three ramps have mitigation measures installed per the 1991 regulations. No modifications have been made to the terminal ramps since 2005.</p> <p>TAA has identified two drinking fountains that protrude farther than regulation. TAA will address this issue and ensure fountains meet regulation by September 30, 2022.</p> <p>TAA's concessionaires are performing an ADA compliance assessment with an ADA consultant to address their seating and rope/stanchion to be in compliance with requirements. Solution in place expected to be completed by end of 2022.</p> <p>TAA is reviewing all other stanchions throughout the terminal complex for compliance with regulations and will be working with tenants to bring seating and stanchions into compliance. A project will be scoped and budgeted for the solution of rope and stanchion modification or replacement. Project is anticipated to be completed by December 2023.</p>		
<p><b>Action Items</b></p>		
<p>Request: We will follow up on the two AED wall mounted units, and the protruding water fountains, by the projected completion date, September 30, 2022.</p> <p>For Concourse A, 8.7% is greater than the 1:12 running slope requirement. Please provide a corrective action plan and additional information on mitigation measures that was put in place.</p> <p>For the concessionaries, we will follow on the corrective action plan by the end of 2022; and the stanchions by December of 2023.</p> <p>Status: <b>Submitted, Pending Review</b></p> <p>Created: 8/3/2022 by Melissa Wu  Due Date: 9/30/2022  Completed: 9/29/2022  Response: 9/29/2022 by Bert Resimont</p> <p>Response: The two AED wall mounted units have been replaced with new ones that protrude less than 4" from wall. See attached pics. It will be approximately another 10 - 14 days before the two drinking fountains will be fixed to meet ADA regulations as we are waiting on the parts to arrive to make the alteration.</p>		
<p> <a href="#">Concourse A - AED (9/29/2022 by Bert Resimont)</a> <i>Concourse A - AED case changed so it is now less than 4" from wall.</i> <span style="float: right;"><b>view</b></span></p> <p> <a href="#">Concourse B - AED (9/29/2022 by Bert Resimont)</a> <i>Concourse B - AED case changed so it is now less than 4" from wall.</i> <span style="float: right;"><b>view</b></span></p> <p> <a href="#">TAA Responses to FAA Additional Questions (8/25/2022 by Bert Resimont)</a> <i>Clarification on Concourse A Slope Measurement</i> <span style="float: right;"><b>view</b></span></p>		

### Revolving Doors

15	1991 ADAAS 4.13.2	Are airport guests that are leaving the secure area required to pass through revolving doors?
N/A		

### Elevators

16	1991 ADAAS 4.10	Meet requirements regarding hoistway Braille characters, raised call buttons, door protective/reopening device, car controls, car size, emergency communications, etc.? Are all elevators that are necessary for accessing public areas of the airport operating and available to the public, without having to request special assistance?
Yes		





### Boarding and Deplaning Assistance

17	49 CFR § 27.72; 14 CFR § 382; AC 150/5220- 21C Chapter 2	Ensure appropriate assistance and equipment for boarding aircraft, including jet bridges that are not overly steep and have sufficient level space for safe transfer between wheelchairs and aisle chairs?
Yes		

### Interior Doors

18	1991 ADAAS 4.13	Meet requirements regarding door pull force, clear space, hardware, etc.?
Yes		

### Under-sink Pipes

19	1991 ADAAS 4.19	Are under-sink pipes covered by insulation or concealed behind panels?
<p>Partial</p> <p>TAA inspected all sinks and will wrap all exposed pipes. Work to be completed by September 30, 2022.</p> <hr/> <p><b>Action Items</b></p> <p>Request: Please provide us with pictures once this item is completed by September 30, 2022.</p> <p>Status: <b>Submitted, Pending Review</b></p> <p>Created: 8/3/2022 by Melissa Wu</p> <p>Due Date: 9/30/2022</p> <p>Completed: 11/4/2022</p> <p>Response: 11/4/2022 by Bert Resimont</p> <p>Response: Apologies for the delay on getting these measurements and submitting. Our 504 coordinator is out of the office for an extended period.</p> <p>Some restrooms had existing panel enclosures underneath the sinks. For restrooms that had unwrapped exposed under-sink pipe, those pipes have now been wrapped and are no longer exposed. See attachment for measurement pics for knee/toe clearances.</p> <p>Review Comments: Please provide us with the knee and toe clearance measurement. It should comply with section 306 of the Standards.</p> <p> Restroom Under Sink Pick 1 (9/16/2022 by Bert Resimont) <a href="#">view</a></p> <p> Restroom Under Sink Pick 2 (9/16/2022 by Bert Resimont) <a href="#">view</a></p> <p> Restroom Under Sink Pick 3 (9/16/2022 by Bert Resimont) <a href="#">view</a></p> <p> Tucson Knee Toe 306 Measurements (11/4/2022 by Bert Resimont) <a href="#">Tucson Knee Toe 306 Measurements</a> <a href="#">view</a></p>		

### Toilet Rooms

20	1991 ADAAS 4.16, 4.17, 4.22, 4.23	Does each restroom have at least one wheelchair accessible stall / toilet? (Note the toilet seat height, grab bar, and maneuverable space requirements.)
Yes		

### Drinking Fountains

21	1991 ADAAS 4.1.3(10); 4.15	Meet requirements regarding spout location, height, clear floor space, controls, etc.?
Yes		

### Emergency Evacuation

22	1991 ADAAS 4.28, 4.33.3; A4.3; A4.28	Meet requirements regarding visual and audible alarms, clearly marked exits with accessible symbols, accessible exits and refuge areas, etc.?
Yes		

### Service Animal Relief Area(s)

23	49 CFR § 27.71; 14 CFR § 382	Is at least one SARA located in the sterile (post-security) area of each terminal? If not, does the airport authority have documentation of a determination from TSA or of an agreement with required stakeholders to locate the SARA elsewhere?
Yes		

### Transportation Services

24	49 CFR §§ 37.5, 37.7, 37.23, 37.33, 37.129, 37.131, 37.163, 37.165, 37.167, 37.173	If the airport authority or a contractor operates inter-terminal shuttles, parking lot shuttles, or similar ground transportation services, are the services accessible?
Yes		
25	49 CFR §§ 37.5, 37.7, 37.23, 37.33, 37.103, 37.129, 37.131, 37.163, 37.165, 37.167, 37.173	Does the airport authority ensure that all hotel shuttles that operate at the airport under a license, contract, or similar agreement meet accessible service requirements?
Yes		

### Reasonable Modification / Accommodation

26	28 CFR § 35.130(b)(7); 49 CFR § 27.7(e)	Does the airport authority have a process for receiving and responding to requests for reasonable assistance and requests for modifications from general rules from members of the public, and is it advertised to the public?
Yes		

### Employment

27	49 CFR § 27.19	Apart from efforts to remove or overcome the consequences of prior discrimination, does the airport and do its tenants and contractors ensure against different treatment of employees and employment applicants on the basis of disability?
Yes		

Signature: Bert Resimont  
 Compliance Audit Administrator  
 Tucson Airport Authority  
 7/18/2022

Files

Actions	Type	File	Added
view edit delete	Supporting Documentation for Assessment	TAA Responses to FAA Additional Questions	7/18/2022 by Bert Resimont
view	Supporting Documentation for Assessment	TUS Pictures 2022	6/14/2022 by Melissa Wu

FAA: TUS ADA/Section 504 Assessment Submitted



FAA Civil Rights Connect <faa@civilrightsconnect.com>  
 To: Bert Resimont

Reply Reply All Forward

Mon 7/18/2022 11:32

If there are problems with how this message is displayed, click here to view it in a web browser.  
 Click here to download pictures. To help protect your privacy, Outlook prevented automatic download of some pictures in this message.

**FAA Civil Rights Connect**

**TUS ADA/Section 504 Assessment Submitted**  
 A ADA/Section 504 Assessment for TUCSON INTERNATIONAL has been Submitted by Bert Resimont.  
[Click here to access the record.](#)

If you have any questions, please contact your regional FAA Compliance Specialist.  
**FAA Civil Rights Connect System**  
 Web Access: <https://FAA.CivilRightsConnect.com/>  
 Customer Support: <https://FAA.CivilRightsConnect.com/FAA/RequestSupport.asp>

[https://www.faa.gov/sites/aa.gov/files/about/office\\_org/headquarters\\_offices/acr/Title\\_VI\\_Compliance\\_Review\\_Self.pdf](https://www.faa.gov/sites/aa.gov/files/about/office_org/headquarters_offices/acr/Title_VI_Compliance_Review_Self.pdf)

## Airport Nondiscrimination Compliance Program (Title VI) Self-Assessment

	REFERENCES	QUESTIONS	YES/NO
<b>APPLICATION</b>			
1	49 CFR 21.3	Does the Airport receive Federal Financial Assistance from the FAA or any other Federal agency?	
<b>ADMINISTRATIVE</b>			
2	49 CFR Part 21, Appendix C(b)(2)	Does the Airport have a copy of 49 CFR Part 21 available for inspection during normal business hours by any person requesting it? (In the Airport administration office in the terminal/offsite; hardcopy or online.)	
<b>COMPLIANCE</b>			
3	49 CFR 21.5(b)(7)	Has the Airport taken affirmative action(s) to remove the effects of <b>prior</b> discriminatory practices?	
4	49 CFR 21.5(b)(7)	Has the Airport taken affirmative action measures to prevent <b>future</b> discriminatory practices?	
5	49 CFR 21.5(c)(1)	Does the Airport take affirmative action to ensure that applicants are employed, and employees are treated during employment, without regard to their race, color, or national origin?	
6	49 CFR 21.9(b)	Does the Airport maintain records and collect data necessary to permit accurate reporting of their compliance? (e.g., information that supports the Airport's ability to demonstrate a robust Title VI program, such as US Census data for surrounding areas, knowing who uses or may use the Airport, etc.)	
7	49 CFR 21.9(d)	Does the Airport display the "Unlawful Discrimination" poster conspicuously in the main public area or areas of the Airport? (e.g., information booths, food courts, waiting areas, baggage area, and fixed base operator facility, etc.) (A copy of the sample poster can be found at <a href="http://www.faa.gov">www.faa.gov</a> by searching the term "Unlawful Discrimination poster.")	
8	49 CFR 21.9(d)	Does the Airport use other ways to inform the flying public of their Title VI rights? (e.g., placing the poster on the Airport website, informing Airport employees, airlines, concessionaires, etc.)	
<b>OUTREACH</b>			
9	49 CFR Part 21, Appendix C(a)(1)(x)	Does the Airport conduct outreach in the minority- and/or women-owned business community to advise them of the opportunities offered by Airport concessions, and that bids are solicited from such qualified minority firms?	
<b>EMPLOYMENT</b>			
10	49 CFR Part 21, Appendix C(a)(1)(ix)	Is public transportation (bus, train, etc.) available at the Airport?	
10a		If yes, Does the Airport coordinate with the local transit authority and the Federal Transit Administration, to assure public transportation, is convenient to the disadvantaged areas of nearby communities to enhance employment opportunities?	
<b>THIRD PARTY</b>			
<i>(Also see: Required Contract Provision for AIP and for Obligated Sponsors, Airport Sponsor Grant Assurances particularly, grant assurance #30)</i>			
11	49 CFR Part 21, Appendix C(b)(1)	Does the Airport have the appropriate clause in each <b>AIP funded</b> contractual agreement (e.g. lease, contract, permit, deeds, subcontracts, etc.) between the Airport and any entity that provides any activity, service, or facility at the Airport?	
12	49 CFR Part 21, Appendix C(b)(1)	Does the Airport have the appropriate clause in each <b>non-AIP funded</b> contractual agreement (e.g. lease, contract, permit, deeds, subcontracts, etc.) between the Airport and any entity that provides any activity, service, or facility at the Airport?	
13	49 CFR Part 21, Appendix C(b)(1)	Does the Airport have a method for monitoring and ensuring that primary contractors have included Title VI requirements in their subcontracts?	
<b>COMPLAINTS</b>			
14	49 CFR Part 21, Appendix C(b)(3)	Has the Airport received any Title VI complaints within the past three years?	
14a		If yes, Did the Airport forward to the FAA, within 15 days after receipt, a copy of each written Title VI complaint and the actions taken regarding the complaint?	
15	49 CFR Part 21, Appendix C(b)(3)	Does the Airport have Title VI complaint procedures?	
15a		If yes, Are they available to the public at the information booth, in the Administrative Office, and/or on the Airport website?	
16	49 CFR 21.9(b)	As part of the complaint procedures, does the airport have a system for collecting complaint information from all Airport employees, airlines, concessionaires, etc.?	
16a		If yes, Has the Airport communicated the complaint procedures to these entities?	

REFERENCES		QUESTIONS	Yes/No
<b>COMPLAINTS (CONTINUED)</b>			
17	49 CFR Part 21, Appendix C(b)(3)	Does the Airport have a Title VI complaint form?	
17a		If yes, Is it available to the public at the information booth, in the Administrative Office, and/or on the Airport website?	
<b>LIMITED ENGLISH PROFICIENCY (LEP)</b>			
18	70 FR 74087; 49 CFR 21.5	Does the Airport collect data to determine their LEP population using the four factor analysis? The following are the four factors: 1. The number or proportion of LEP individuals served or encountered in the Airport's service area 2. The frequency of contact between LEP individuals and the Airport's programs, activities or services 3. The nature and importance of the program, activity, or service provided by the Airport 4. The resources available to the Airport and related costs	
19	70 FR 74087; 49 CFR 21.5	Does the Airport use any additional process(es) for determining their LEP population? (e.g., surveying travelers, collecting and recording language assistance requests, etc.)	
20	70 FR 74087; 49 CFR 21.5	Has the Airport checked with Airport employees, airlines, concessionaires, etc., to learn what languages, other than English, they encounter?	
21	49 CFR 21.5	Based on the results of the four factor analysis, does the Airport analyze their programs and services to determine the need for language assistance for LEP individuals?	
22	49 CFR 21.5	Are resources currently in place to provide meaningful access for LEP individuals?	
23	49 CFR 21.5	Does the Airport have an LEP plan? The following are the five elements of an LEP Plan: 1. Identification of LEP individuals (first two factors of the four factor analysis) 2. Language assistance measures (services available) 3. Staff training (training staff on the LEP Plan, their role and responsibilities) 4. Provide notice (informing LEP individuals, as appropriate in languages other than English, of the availability of language assistance services) 5. Monitoring and updating (how the LEP Plan will be kept current)	
23a	49 CFR 21.5	If no, Does the Airport inform LEP individuals of the availability of language assistance services? (e.g., conduct outreach to LEP communities regarding language assistance services, signage to direct LEP persons to sources of assistance, etc.)	
24	AC 150/5200-31C	Does the Airport Emergency Plan identify how LEP individuals/populations will be assisted in an emergency?	
24a		If yes, Are they included with other special needs individuals, mentioned separately, etc.?	
<b>ENVIRONMENTAL JUSTICE (EJ)</b>			
25	49 CFR Part 21, Appendix C(a)(1)(viii)	Does the Airport have an effective public communication plan to enable involvement of minority and/or low income populations in the decision making process for potential airport projects, and for ongoing EJ concerns?	
26	49 CFR Part 21, Appendix C(a)(1)(viii)	Does the Airport maintain records and collect data necessary to understand the racial and ethnic composition of the surrounding communities in order to determine if projects may have EJ impacts? (e.g., information that supports the Airport's ability to demonstrate their knowledge of the communities near the airport, such as the National Environmental Policy Act (NEPA) data, etc.)	
27	49 CFR Part 21, Appendix C(a)(1)(viii)	Within the past three years, has any Airport project or potential project had an EJ impact on minority and/or low income communities?	
28	49 CFR Part 21, Appendix C(a)(1)(ix)	Is the Airport EJ point of contact, aware of the Airport's responsibility pertaining to the Title VI and EJ Pre-Grant Award requirements?	
29	49 CFR Part 21, Appendix C(a)(1)(viii)	Has the Airport conducted a 14 CFR Part 150 Study within the past five years?	
30	49 CFR Part 21, Appendix C(a)(1)(viii)	Has the Airport received a grant for noise mitigation purposes within the past three years?	

**Airport Nondiscrimination Compliance Program Team**

Federal Aviation Administration  
 Office of Civil Rights, ATTN: ANCP  
 1 Aviation Plaza, Jamaica, NY 11434

Phone: 718-553-3295



Federal Aviation Administration