

RESOLUTION OF THE  
WHITE MOUNTAIN APACHE TRIBE OF THE  
FORT APACHE INDIAN RESERVATION

WHEREAS, Mr. Lafe Altaha has been previously appointed by the Tribal Council as the section 504 Coordinator for the purpose of implementing Revenue Sharing Section 504 administrative requirements, a check list of which is attached to this resolution, and

WHEREAS, pursuant to the applicable Revenue Sharing requirements, public buildings must be designed in such a way that they do not discriminate or obstruct the mobility of the handicapped, and

WHEREAS, Mr. Altaha, as the Section 504 Coordinator, is authorized to coordinate the implementation of national standards for accessibility of public buildings for the physically handicapped existing and future public buildings on the Fort Apache Indian Reservation.

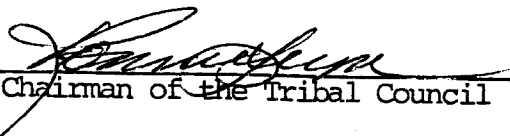
BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby request that the General Management of the Development Enterprise and the Tribal Administrative Manager coordinate and assist Mr. Altaha as the 504 Coordinator for purposes of implementing Revenue Sharing handicapped accessibility regulations in public buildings on the reservation.


The foregoing resolution was on September 17, 1985 duly adopted by a vote of 10 for and 0 against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1 (i) of the Amended Constitution and By-Laws of the Tribe, ratified by the Tribe June 27, 1958 and approved by the Secretary of the Interior on May 29, 1958, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

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FORT APACHE INDIAN  
AGENCY  
WHITE MOUNTAIN

  
Chairman of the Tribal Council

  
Secretary of the Tribal Council

**Administrative Requirements of the Revenue Sharing Handicapped Regulations**

*Not all recipients must comply with all provisions of the final regulations which were previously deferred. The list below indicates which provisions are applicable to all recipients and those additional requirements which apply to recipients who receive \$25,000 or more in revenue sharing funds for each entitlement period.*

**All recipients must:**

- Conduct a self-evaluation
- Make necessary nonstructural changes to achieve accessibility
- Make necessary structural changes to achieve accessibility
- Prepare a transition plan where structural changes are necessary

**Recipients who receive \$25,000 or more in each entitlement period must also:**

Maintain on file for three years:

- a list of persons consulted
- a description of policies and practices examined
- descriptions of modifications made

Publish a statement in publications and recruitment materials stating that the recipient does not discriminate against handicapped persons

Designate an employee to coordinate compliance

Adopt a grievance procedure

Provide initial and continuing notification that recipient doesn't discriminate against handicapped persons

Make a copy of transition plan available for public inspection for three years and furnish it to ORS upon request -

**Checklist: Revenue Sharing Section 504 Administrative Requirements**

		Yes	No	Documentation (such as date of action; attach copy if available)	
<b>Initial notification</b>	Recipients receiving \$25,000 or more in revenue sharing funds per entitlement period must publish by January 17, 1984, an initial notification that the recipient doesn't discriminate on the basis of handicap status.				
<b>Designation of responsible employee</b>	Recipients receiving \$25,000 or more in revenue sharing funds per entitlement period must designate a section 504 coordinator by October 17, 1984.				
<b>Adoption of grievance procedure</b>	Recipients receiving \$25,000 or more in entitlement funds per entitlement period must establish a grievance procedure by October 17, 1984, that provides for the submission and resolution of complaints.				
<b>Self-evaluation</b>	All recipients must complete by October 17, 1984, a self-evaluation of their programs and activities to determine whether they are accessible to handicapped persons.				
<b>Nonstructural changes</b>	All recipients must complete nonstructural changes to achieve program accessibility by October 17, 1984.				
<b>Transition plan</b>	All recipients must prepare a transition plan where structural changes are necessary by October 17, 1984. Recipients receiving \$25,000 or more in each entitlement period must also make a copy of the transition plan available for public inspection for three years and furnish it to ORS upon request.				
<b>Public notification (includes "continuing notice")</b>	Recipients receiving \$25,000 or more in revenue sharing funds per entitlement period must take continuing steps to notify beneficiaries and employees that they do not discriminate on the basis of handicap. All such notices must be effective for those with impaired vision and hearing.  Recruitment materials or publications containing general information that is made available to program participants, beneficiaries, applicants and employees must contain an appropriate non-discrimination statement. Public notification should be an ongoing process.				
<b>Structural changes</b>	All recipients must complete all structural changes identified to achieve program accessibility in the transition plan by October 17, 1986.				
<b>Retention of files</b>	Recipients receiving \$25,000 or more in revenue sharing funds per entitlement period must maintain on file for three years: (1) a list of persons consulted, (2) a description of policies and practices examined, and (3) descriptions of modifications made. (The self-evaluation and transition plan can include such information.)				

**DEPARTMENT OF THE TREASURY**

**Office of Revenue Sharing**

**31 CFR Part 51**

**Fiscal Assistance to State and Local Governments; Discrimination on the Basis of Handicap**

**AGENCY:** Office of Revenue Sharing, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to order of the Court in *Paralyzed Veterans of America et al. v. Smith et al.*, this rule makes final the interim regulation implementing the incorporation of Section 504 of the Rehabilitation Act of 1983 into 31 U.S.C. 6701 through 6724 the "Revenue Sharing Act." Section 504 prohibits discrimination on the basis of handicapped status in programs of Federal financial assistance. Except for section 51.55(b)(1)(ix), the provisions of the interim regulation that were previously deferred now take effect.

**EFFECTIVE DATE:** October 17, 1983.

31 CFR is amended by adding § 51.55 to read as follows:

**§ 51.55 Discrimination on the basis of handicap.**

(a) *Definition.* As used in this section the phrase:

(1) "Handicapped individual" 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.

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

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

(4) "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.

(5) "Is regarded as having an impairment" means (i) has a physical or mental impairment that does not substantially limit major life activities, but that is treated by a recipient government 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 (a)(1) of this section but is treated by a recipient government as having such impairment.

(6) "Qualified handicapped individual" means (i) with respect to employment, a handicapped individual who, with reasonable accommodation, can perform the essential functions of the job in question; and (ii) with respect to services, a handicapped individual who meets the essential eligibility requirements for the receipt of such services.

(b) *General prohibitions with respect to discrimination against a qualified handicapped individual.*

(1) Those general prohibitions described in § 51.52(b) of this subpart, also apply to discrimination against a handicapped individual, with the exception of § 51.52(b)(1) (ii), (iii) and (iv) of this section which are covered by the provisions of this subsection. In addition, a recipient government shall:

(i) Not exclude a qualified handicapped individual from participation in programs or activities open to the general public, regardless of the availability of permissibly separate or different programs or activities designed especially for the handicapped;

(ii) Administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped individuals;

(iii) Take appropriate steps to ensure that communications with applicants, employees, beneficiaries, and the general public are available to persons with impaired vision or hearing, through means such as brailled or taped material, telecommunication devices, televised information or other media;

(iv) Take the appropriate steps to ensure that the public hearings required under §§ 51.13 and 51.14 of this part are accessible to qualified handicapped individuals and that notice of such hearings is made available to individuals with impaired vision and hearing, through means such as telecommunication devices, brailled or

taped material, televised information, qualified sign language interpreters or other media;

(v) Provide a qualified handicapped individual with an aid, benefit, or service that is 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;

(vi) Not provide a different or separate aid, benefit, or service to qualified handicapped individuals or to any class of qualified handicapped individuals than is provided to others unless such action is necessary to provide qualified handicapped individuals with aid, benefits, or services that are as effective as those provided to others;

(vii) Not aid or perpetuate discrimination against a qualified handicapped individual by funding an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the program or activity;

(viii) A recipient government shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration that:

(A) Have the effect of subjecting qualified handicapped individuals to discrimination on the basis of their handicaps;

(B) Have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient government's program with respect to handicapped individuals; or

(C) Perpetuate the discrimination of another department of the recipient government if both departments are subject to common administrative control or are agencies of the same recipient government; and

(ix)

(Reserved)

(2) The exclusion of persons that are not handicapped individuals from the benefits of a program limited by Federal statute or executive order to handicapped individuals, or the exclusion of a specific class of handicapped individuals from a program limited by Federal statute or executive order to a different class of handicapped individuals, is not prohibited by this section.

(3) For purposes of this section, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped individuals. They must, however, afford qualified handicapped individuals equal

opportunity to obtain the identical result or achievement in the most integrated setting appropriate to the individual's needs.

(4) A recipient government which government receives \$25,000 or more entitlement funds in each entitlement period, shall, at the request of, and in consultation with such individual, provide appropriate auxiliary aids to individuals with impaired sensory, manual or speaking skills, where necessary to prevent a qualified handicapped individual from being denied the benefits of, excluded from participation in or subjected to discrimination under a program or activity. Such auxiliary aids may include brailled or typed material, the provision of qualified sign language interpreters, the provision of telecommunication devices, captioned films, video tapes, televised information or other media. The Director may require recipient governments which receive less than \$25,000 in entitlement funds in each entitlement period to provide appropriate auxiliary aids when the Director finds that such aids are appropriate to remedy a violation of the provisions of this section.

(5) The enforcement provisions contained in this subpart are applicable to violations of the provisions of this section.

*(c) Self-evaluation.*

(1) A recipient government shall, within one year of the effective date of this section, with the assistance of interested individuals, including handicapped individuals and organizations representing them:

(i) Evaluate its current policies and practices and their effects which do not meet the requirements of this section;

(ii) Modify any policies and practices that do not meet the requirements of this section, and take appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these discriminatory policies and practices, except as otherwise provided where structural changes may be required pursuant to paragraph (k) of this section.

(2) Self-evaluations already prepared (or under preparation) to comply with the Section 504 requirements imposed by other Federal departments or agencies, may be used as part of the self-evaluation required pursuant to this section.

(3) The self-evaluation may include but is not limited to an examination of: a recipient government's policies and practices concerning employment decisions; the extent to which its programs and activities are readily accessible to and usable by the handicapped; whether its policies and

practices concerning the delivery of aids, benefits and services to beneficiaries are free from discriminatory effects on the handicapped; and, whether it is engaging in contractual arrangements which have the effect of subjecting handicapped persons to discrimination.

(4) A recipient government, which government receives \$25,000 or more entitlement funds in each entitlement period, shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Director upon request (i) a list of the interested individuals consulted, (ii) a description of policies and practices examined and problems identified, and (iii) a description of modifications made and remedial steps taken (record-keeping requirement cleared by OMB, No. 1505-0036, through January 31, 1982).

*(d) Designation of responsible employee and adoption of grievance procedures.*

(1) A recipient government, which government receives \$25,000 or more entitlement funds in each entitlement period, shall designate at least one person to coordinate its efforts to comply with this section. Where designation of such a person has already been made to comply with the Section 504 requirements of other Federal departments or agencies, that person may also be used to comply with the requirements of this section.

(2) A recipient government, which government receives \$25,000 or more entitlement funds for one or more entitlement periods, shall adopt a grievance procedure that incorporates appropriate due process standards and that provides for the prompt and equitable resolution of complaints alleging any action prohibited by this section. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to post-secondary educational institutions. Existing grievance procedures may be used to meet the requirements of this subsection.

*(e) Notice.*

(1) A recipient government, which government receives \$25,000 or more entitlement funds in each entitlement period, 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 government, that it does not discriminate on the basis of

handicapped status in violation of this section. The notification shall state, where appropriate, that the recipient government does not discriminate on the basis of handicapped status in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to section 51.55(d). A recipient government shall make the initial notification required by this paragraph within 90 days of the effective date of this section. Methods of initial and continuing notification shall ensure that the information is communicated to the visually or hearing impaired. Such methods may include the use of public service radio and television announcements, and telecommunications devices, the posting of notices, the publication of notices in newspapers and magazines, the placement of notices in recipient governments' publications, and the distribution of memoranda or other written and taped communications.

(2) Whenever a recipient government publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, or the general public, it shall include in those materials or publications a statement that it is the policy of the recipient government not to discriminate against the handicapped in employment or the provision of services. A recipient government may meet the requirements of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

*(f) Administrative requirements for small recipient governments.* The Director may require any recipient government, which government receives less than \$25,000 in entitlement funds in each entitlement period, to comply with the provisions of § 51.55 (c), (d), and (e), in whole or in part, when the Director finds that such requirements are appropriate to remedy a violation of the provisions of this section.

*(g) Employment discrimination against a qualified handicapped individual.*

(1) A recipient government shall:

(i) Not discriminate against a qualified handicapped individual in employment in any program or activity;

(ii) Not participate in a contractual or other relationship that has the effect of subjecting a qualified handicapped applicant or employee to discrimination prohibited by this section. The relationships referred to in this paragraph include relationships with

employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient government, and with organizations providing training and apprenticeship programs:

(iii) Make all decisions concerning employment under any program or activity in a manner which ensures that discrimination on the basis of handicap does not occur and not limit, segregate, nor classify applicants or employees in any way that adversely affects their opportunities or status because of handicap;

(iv) Take appropriate steps to ensure that communications with its applicants and employees are available to persons with impaired vision and hearing as described in § 51.55(b)(1)(iii) and (b)(4);

(v) Not discriminate against a qualified handicapped individual in the following specific activities:

(A) Recruitment, advertising, and the processing of applications for employment;

(B) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(C) Setting rates of pay or any other form of compensation and changes in compensation;

(D) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(E) Granting leaves of absence, sick leave, or any other leave;

(F) Providing fringe benefits available by virtue of employment, whether or not administered by the recipient government;

(G) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(H) Employer sponsored activities, including social or recreational programs; and

(1) Any other term, condition, or privilege of employment.

(2) A recipient government's obligation to comply with this section is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

(3) A recipient government's obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are more limited for handicapped individuals than for nonhandicapped individuals.

(h) *Reasonable accommodation.*

(1) A recipient government shall make reasonable accommodation to the

known physical or mental limitations of a qualified handicapped applicant or employee unless the recipient government can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity.

(2) Reasonable accommodation may include:

(i) Making facilities used by employees readily accessible to and usable by handicapped persons, and  
 (ii) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices (e.g., telecommunications devices and other telephone devices), the provision of readers or qualified sign language interpreters, and other similar actions. Accommodations shall be made in consultation with the handicapped individual.

(3) The determination of whether an accommodation would impose an undue hardship on the operation of a recipient government's program or activity shall be made on a case-by-case basis upon consideration of the following factors:

(i) The overall size of the recipient government's operations with respect to number of employees, number and type of facilities, and size of budget;

(ii) The type, composition and structure of the specific program or activity and the structure of the workforce required; and

(iii) The nature and cost of the accommodation needed. Such reasonable accommodation may require a recipient government to undertake more than an insignificant economic cost in making allowance for the handicap of a qualified applicant or employee and to accept minor inconvenience which does not bear on the ability of the handicapped individual to perform the essential functions of the job in question.

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

(i) *Employment criteria and policies.*

(1) A recipient government may not use any employment test, selection criterion or policy, that screens out, or tends to screen out from consideration for employment, a handicapped individual or any class of handicapped individuals unless:

(i) The test, selection criterion or policy as used by the recipient, is shown to be directly related to the essential functions of the position in question, and

(ii) Alternative job-related tests,

criteria or policies that do not screen out, or tend to screen out as many handicapped individuals are shown to be not available.

(2) A recipient government shall select and administer tests using procedures (e.g., auxiliary aids such as readers for visually-impaired individuals or qualified sign language interpreters for hearing-impaired individuals) that accommodate the special problems of handicapped individuals to the fullest extent consistent with the objectives of the test. The test results shall accurately reflect the applicant's or employee's ability to perform the essential functions of the job in question, rather than the applicant's or employee's impaired sensory, manual or speaking skills, except where such skills are essential requirements of the job.

(3) If a recipient government has established a test, selection criterion or policy that explicitly or implicitly screens out, or tends to screen out, a class of handicapped individuals from a particular job, and cannot establish that the class as a whole is unqualified to perform the job, the recipient government shall evaluate each such individual who applies for the job to determine whether the applicant can perform the essential functions of the job in question despite the handicap. As part of the determination, the recipient government shall also decide whether such applicant would be qualified to perform the essential functions of the job in question through reasonable accommodation without undue hardship, as provided in § 51.55(h) of this section.

(j) *Preemployment inquiries.*

(1) Except as provided in paragraphs (j) (2) and (3) of this subsection, a recipient government may not conduct a preemployment medical examination or make preemployment inquiry of an applicant as to whether the applicant is a handicapped individual or as to the nature or the severity of a handicap. A recipient government may, however, make preemployment inquiry into an applicant's ability to perform the essential functions of the job.

(2) When a recipient government is taking remedial action to correct the effects of past discrimination; when a recipient government is taking voluntary action to overcome the effects of conditions that resulted in limited participation in a program or activity, or when a recipient government is taking affirmative action, the recipient government may invite applicants for employment to indicate whether and to what extent they are handicapped, provided that:

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

(ii) The recipient government states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (j)(4) of this section; that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this section.

(3) Nothing in this section shall prohibit a recipient government from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided that: (i) all entering employees are subjected to such an examination regardless of handicap, and (ii) the results of such an examination are used only in accordance with the requirements of this section.

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

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

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

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

(k) *Program accessibility.*—(1) *Discrimination prohibited.* No qualified handicapped individual shall, because the facilities owned or leased by a recipient government are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity of a recipient government, which government receives entitlement funds.

(2) *Existing facilities.*—(i) *Program accessibility.* A recipient government shall operate each program or activity in existing facilities owned or leased by it, so that the program or activity, when viewed in its entirety, is readily accessible to and usable by

handicapped individuals. Recipient governments are not necessarily required to make each existing facility, or every part of an existing facility accessible to and usable by handicapped individuals. Where structural changes are necessary to make programs or activities in existing facilities accessible, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of this regulation except as otherwise provided in this section. Recipient governments shall not be required to revoke leases on which lessors refuse to make the structural changes needed if no more accessible facility is available, but shall use the provisions of subparagraph (ii) to ensure that the maximum possible accessibility is achieved.

(ii) *Methods of compliance.* A recipient government may comply with the requirements of paragraph (1) of this section through such means as redesign of equipment, the use of telecommunications devices or other telephone equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of paragraph (k)(7) of this section, or any other methods that result in making its programs or activities accessible to handicapped individuals. A recipient government is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (k)(1) of this section. In choosing among available methods for meeting the requirements of paragraph (k)(1) of this section, a recipient government shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate to obtain the full benefits of the program.

(3) *Exception for small recipient governments.* If a recipient government, which government receives less than \$25,000 in entitlement funds, in each entitlement period, determines, after consultation with a handicapped individual seeking a health, welfare or social service, that there is no method of complying with paragraph (k)(1) of this section other than making a significant alteration in its existing facilities, that government may, as an alternative, refer the handicapped individual to other providers of those services that are accessible at no additional cost to the handicapped individual. Examples of other providers of those services are

States, counties or other larger units of local government.

(4) *Time periods.*—(i) *Nonstructural changes for accessibility.* Where a recipient government has determined that certain nonstructural changes are necessary to make its programs and activities readily accessible to and usable by the handicapped, after evaluating its policies and practices during the self-evaluation required pursuant to subsection (c), these changes shall be made, with other modifications determined to be needed, within the one year period for completion of the self-evaluation.

(ii) *Structural changes for accessibility.* Except as otherwise provided in subparagraph (iii), where a recipient government has determined that structural changes in facilities are necessary to make its programs and activities readily accessible to and usable by the handicapped, after evaluating its policies and practices during the self-evaluation required pursuant to paragraph (c), those changes shall be made as soon as possible but not later than three years from the effective date of this section.

(iii) *Transportation systems.* Transportation systems shall be made accessible to qualified handicapped individuals as provided in paragraph (k)(1) of this subsection in the same manner and within the time periods prescribed in regulations issued by the Department of Transportation (49 CFR Part 27, Subpart E).

(5) *Transition plan.* In the event that structural changes to facilities are necessary to comply with the requirements of paragraph (k)(1) of this section, a recipient government shall develop, within one year of the effective date of this section, a transition plan setting forth the steps necessary to complete such changes within the time periods in paragraph (k)(4) of this section. The plan shall be prepared as part of the self-evaluation required under § 51.55(c) and developed with the assistance of interested individuals, including handicapped individuals or organizations representing handicapped individuals. Transition plans already prepared (or under preparation) to comply with the Section 504 requirements imposed by other Federal agencies, may be used as part of the transition plan required pursuant to this section. A recipient government which government receives \$25,000 or more in entitlement funds shall make a copy of the transition plan available for public inspection for a period of three years and furnish it to the Director upon request. The plan shall, at a minimum:

(i) Identify physical obstacles in the recipient government's facilities that



limit the accessibility of its program or activity to handicapped individuals;  
 (ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period for the transition is longer than one year, identify steps that will be taken during each year of the transition period; and

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

(6) *Notice.* The recipient government shall adopt and implement procedures to require that interested individuals, including individuals with impaired vision or hearing, can obtain information as to the existence and location of particular services, activities, and facilities that are accessible to and usable by handicapped individuals.

(7) *New construction.* The construction of facilities by a recipient government financed in whole or in part with entitlement funds or the construction of a facility pursuant to a contract for the recipient government to lease the building facility in its entirety, on or after January 1, 1977, shall be accomplished so as to be readily accessible to and usable by handicapped individuals.

(8) *Alterations.* Alterations to existing facilities owned, or leased by a recipient government, which alterations are funded with entitlement funds and commenced on or after January 1, 1977, shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped individuals.

(9) *American National Standards Institute Accessibility Standards.* Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A 117.1-1961 (1971)), which is incorporated by reference, shall constitute compliance with paragraphs (k) (1) and (2) of this section. A recipient government also may use the revised ANSI standards issued in May of 1980, which are also incorporated by reference and are obtainable at the same address. A recipient government may use standards other than the 1961 or 1980 standards or other methods, if the government establishes that it is clearly evident that equivalent or better access to the facility

or part of the facility is provided.

(10) *Exception for construction projects commenced prior to January 1, 1977.* The provisions of this subsection do not apply to buildings or construction projects, including those funded with revenue sharing funds, commenced prior to January 1, 1977, including those funded with revenue sharing funds, unless it is determined that programs or activities funded in whole or in part with revenue sharing funds are conducted within or make use of such facilities, in which case, those programs and activities must be readily accessible to and usable by handicapped individuals as described in paragraphs (k)(2) (i) and (ii) of this subsection.

(11) *"Commencement of construction" defined.* A construction project shall be deemed to have commenced when the recipient government has obligated itself by contract for the physical construction of the project or any substantial portion of the project.

(1) *Coordination of unresolved legal issues.*

Whenever the Director receives a complaint which alleges a violation of the provisions of this section and involves a legal issue that has not been resolved judicially or administratively, the Director shall request guidance from the Department of Justice which was designated by Executive Order 12250 to coordinate Section 504, within one week of receipt of such complaint. The Director may defer action on the complaint pending receipt of the guidance if it is determined that such guidance will be received within one month from the issuance of the request. Thereafter, the Director shall then act in accordance with the guidance. If the Director determines that the Department of Justice cannot provide guidance concerning the proper course of action within a period of one month (30 days), the Director shall proceed to initiate fact-finding activities with respect to the complaint. During that process, the Director shall continue to keep the Department of Justice advised of the actions taken, pending receipt of the guidance requested.

**Appendix A—Section-by-Section Analysis**

*Section 51.55 Discrimination on the Basis of Handicap*

Most of the approximately 50 comments on the proposed regulations concerned discrimination on the basis of handicap, as provided in Section 504 of the Rehabilitation Act of 1973. As with the previous proposed handicapped discrimination regulations, the majority of the comments expressed concern about the cost of compliance and

objected to specific provisions such as the definition of handicapped individual, the self-evaluation requirement and the accessibility requirements. The Department has little discretion concerning the substantive provisions contained in these regulations. Executive Order 11914

"Nondiscrimination with Respect to the Handicapped in Federally Assisted Programs" requires Federal departments and agencies with Section 504 responsibility to issue regulations consistent with the standards and procedures established by HEW. Comments requesting elimination of or major revisions to these provisions were not acted upon due to the requirements of the Executive Order, which was issued to ensure consistent Federal enforcement of Section 504. Revisions have primarily been made for clarification purposes and in some instances to make the substantive requirements conform more closely with the requirements for the General Revenue Sharing Program.

One such revision is that all references in the proposed rule to special provisions for smaller recipient governments as those employing fewer than 15 employees have been changed to those receiving \$25,000 or more in entitlement funds in each entitlement period. The reference to fewer than 15 employees has little relevance for the General Revenue Sharing Program which unlike grant programs, provides financial assistance to States and local governments, as opposed to particular departments and agencies or even private entities. The number of recipient governments which employ fewer than 15 persons is negligible. Further, the independent audit requirements in Section 123(c) of the Revenue Sharing Act exempt local governments receiving less than \$25,000 in entitlement funds. In the interest of consistency with this Congressional guidance, the General Revenue Sharing Program's final regulations prohibiting discrimination on the basis of handicap, should also incorporate the \$25,000 standard.

Section 51.55(b) entitled, "General prohibitions with respect to discrimination against a qualified handicapped individual" contains the prohibitions against discrimination in the provision of services. Section 51.55(b)(1) (iii) and (iv) were amended in response to comments that the provisions did not provide sufficient guidance concerning how recipients can make communications and services available to persons with impaired sensory, manual and speaking skills. Examples of methods were added to the regulations. Section 51.55(b)(1)(v) was deleted and a new § 51.55(b)(4) was

\*Copies obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018—(212) 354-3300. Copies are also on file with the Federal Register.



added to expand the discussion of how to provide appropriate auxiliary aids to individuals with impaired sensory, manual and speaking skills. It is noted that auxiliary aids must be provided only at the request of the handicapped individual. Further, recipient governments must consult with the individual to determine the most appropriate auxiliary aids to be used. It is expected that requiring such aids only upon request, as recommended by organizations representing the handicapped, will reduce the cost of providing handicapped individuals with access to programs and activities. It will do so in a manner that will meet as closely as possible the individual needs of the handicapped.

Section 51.55(b)(1)(iv), which requires that the public hearings required under the Act and regulations be accessible to the handicapped, was amended in response to comments to how such hearings can be made more accessible.

Proposed §§ 51.55(b)(1) (vi), (vii) and (viii) are redesignated § 51.55(b)(1) (v), (vi) and (vii). Further, § 51.55(b)(1)(vii) was amended to remove reference to secondary recipients because this definition is currently under review. This does not mean, however, that secondary recipients (as currently defined) are not covered by these provisions.

Section 51.55(b)(1)(ix) has been redesignated § 51.55(b)(1)(viii). One commenter suggested that subparagraph (C) had been drafted too narrowly, prohibiting discrimination against a secondary recipient only if subject to the common administrative control of a recipient government. This subparagraph was amended to delete the reference to the secondary recipient situation and to clarify that where a recipient government funds a particular department in whole or in part with revenue sharing funds, any subdivision of that department cannot use those funds to discriminate.

Section 51.55(c) "Self-evaluation" was reorganized to improve its clarity. This section was amended to clarify that where the self-evaluation discloses the need to make structural changes, those changes are to be made within three years, rather than the one-year period provided for the self-evaluation. A new subsection (c)(2) was also added to allow recipient governments to use self-evaluations already undertaken for departments such as HHS or the Department of Transportation. This provision was added to improve the coordination of Federal enforcement of Section 504. A new subsection (c)(3) was added in response to comment that the proposed regulations did not provide sufficient guidance as to what a

recipient government is to evaluate. Essentially, a recipient government must review all of its policies and practices concerning the provision of services, employment and the selection of facilities to determine their impact upon the handicapped and devise methods to remedy the effects of discrimination found.

In implementing the self-evaluation and transition plan, a recipient government must review all policies and practices, not just those in which revenue sharing funds are currently being expended. This is because a recipient government potentially can spend revenue sharing funds for any purpose permissible under State and local law, therefore, review only of those areas in which such funds are actually expended would not affect those programs and activities which may be funded in the future. Further, a large number of recipient governments appropriate revenue sharing funds to their general funds resulting in the expenditure of revenue sharing funds in part to support all governmental functions. Lastly, this position is consistent with other revenue sharing compliance activities. Recipient governments are requested to conduct public hearings not solely on the use of revenue sharing funds, but also on the use of those funds in relation to their entire budget. Recipient governments are also required to conduct independent audits. Such audits must encompass all funds of the recipient government, not just those in which revenue sharing funds are placed.

Section 51.55(d), "Designation of responsible employee and adoption of grievance procedure" was amended to provide that individuals designated to coordinate Section 504 compliance for other Federal departments and agencies and existing grievance procedures may be used to comply with the requirements of The General Revenue Sharing Program.

Section 51.55(e), "Notice" was amended to provide examples of how public notices can be communicated to the sensory impaired.

Section 51.55(f), "Administrative requirements for small recipient governments" was amended to provide that a small recipient government may be required to comply with the administrative requirements to remedy violations found by the Director. A number of commenters expressed the view that the administrative requirements were too burdensome on smaller recipient governments and should never be required. Others objected to any lessening of the requirements for smaller recipient governments. In an effort to balance

these competing interests, the exceptions for smaller recipient governments are maintained but such governments may be required to comply with the applicable provisions.

Section 51.55(g) "Employment discrimination" was amended to add a new subsection (g)(1)(iii) because it is one of the basic prohibitions contained in the HEW Guidelines and is therefore required to be contained in the regulation. Proposed Sections 51.55(g)(1)(iii) and (iv) are redesignated (iv) and (v). In response to comments, § 51.55(g)(1)(iv) was amended to include examples of how communication can be made available to the sensory impaired. Concerning this section, one commenter questioned whether a recipient government can be required to undertake affirmative action to employ the handicapped. Section 504 does not require affirmative action, as does Section 503. Section 504 requires only that recipient governments refrain from discriminating and undertake remedial action where discrimination is found.

Section 51.55(h), "Reasonable accommodation" was amended in response to comments to add examples of reasonable accommodation for the sensory impaired. The section was also amended to provide that the accommodations shall be made in consultation with the handicapped individual. One commenter requested greater specificity concerning what is required for reasonable accommodation. Considering the broadness of the definition of handicapped individual, what constitutes reasonable accommodation must be determined on a case-by-case basis and the regulation must remain broad. A new sentence is added to subsection (h)(3)(iii) to reflect the fact that an accommodation that causes inconvenience to the recipient government or results in some economic cost is not per se unreasonable.

Section 51.55(i), "Employment criteria and policies" was revised to conform subparagraph (2) more closely to the HEW regulations. Several comments suggested the application of the Uniform Guidelines on Employee Selection Procedures to these provisions. The Guidelines specifically apply only to race, color, national origin, sex and religion. If they are formally revised to apply to handicapped discrimination, the Director will adopt that application. One commenter questioned the use of the phrase "class as a whole" in subsection (i)(3). The Director does not agree that the phrase should be changed. To be able to use a selection procedure which excludes a class of handicapped individuals as a whole, the recipient government must establish to

the satisfaction of the Director that no member of that class of individuals would be able to perform the essential functions of the job in question.

Section 51.55(k). "Program accessibility" received a majority of the comments relating to the cost of compliance. It is emphasized that compliance with this subsection does not mean that recipient governments will be forced to retrofit all of their public buildings. For a particular program or activity to be accessible, it is not required that the entire facility in which the program or activity is conducted be accessible. Structural changes to facilities are required only after all other means of making programs accessible have been pursued.

Recipient governments should first, as part of the self-evaluation, review their program and activities to determine which ones are not accessible; then, recipient governments should determine how those programs and activities can be made accessible. Where structural changes are required, the transition plan should be prepared at the same time as the self-evaluation. Non-structural changes which can be made to achieve accessibility should be accomplished as part of the modifications and remedial action required during the self-evaluation. A period of one year is given for the whole self-evaluation process. It is not likely that the review part of the self-evaluation can be completed within 60 days. Accordingly, the subsection (4) time periods are amended to allow the non-structural changes to be made, with other modifications required under the self-evaluation, during the one year period. Structural changes are still required within three years unless transportation systems are involved, as provided in the proposed rule.

A number of comments were received on § 51.55(k)(10). "Leased facilities." The Director agrees that this provision as written needed clarification. It is important, however, to make it clear that a recipient government cannot avoid the program accessibility requirements merely by conducting its programs and activities in leased facilities. Accordingly, Section 51.55(k)(10) has been eliminated and subsections (k) (1), (2), (k) (7) and (8) have been amended to clarify that programs and activities operated in existing facilities, owned or leased by the recipient government, must be accessible. Where a recipient government leases a facility, it must make whatever non-structural changes are necessary to make facilities accessible. Where an existing facility is leased, however, structural changes will not be required if the lessor refuses to

make them and no other more readily accessible facility is available.

Subsection 51.55(k)(2) is amended to add examples of how greater accessibility can be achieved for handicapped individuals with sensory impairments.

Existing facilities newly leased after January 1, 1977, or on which leases are renewed must meet the requirements of § 51.55(k)(2) for existing facilities. Leases of newly constructed facilities must meet the requirements set forth in § 51.55(k)(7) for new construction. Alterations to existing facilities which are leased must meet the requirements of § 51.55(k)(8).

Section 51.55(k)(5). "Transition plan" was amended to extend the time period for preparation to one year, in order that it could be prepared in conjunction with the self-evaluation. The proposed rule was amended to provide that transition plans prepared to comply with Section 504 requirements for other departments or agencies may also be used to comply with the requirements for the General Revenue Sharing Program.

Section 51.55(k)(9) is amended to incorporate the 1980 American National Standard Institute Standards, as well as the 1961 version and allow compliance with either.

Proposed § 51.55(k)(10), as discussed above, was eliminated.

Proposed § 51.55(k) (11) and (12) have been redesignated as § 51.55(k) (10) and (11). One commenter suggested that the definition of commencement of construction be amended to conform with definition contained in the HEW regulations. In this instance, however, the provision being interpreted is one uniquely included in the Revenue Sharing Act and need not be consistent with HEW's definition.

One commenter suggested that subsection (k) should provide specific provisions concerning the need for structural changes to historical properties. However, the regulations, with their emphasis upon program accessibility over structural changes to facilities, do not need specific treatment of historical properties.

A new § 51.55(l) is added to the regulations to cover the situation in which the ORS is requested to act upon a complaint concerning subject matters unresolved by another Federal agency, the agency in charge of coordination of Section 504, or by the courts. One example of such an unresolved issue is whether obesity should be considered a handicap. Another example is whether all public television broadcasting must be captioned for the deaf. The Department of Education is currently involved in litigation on this issue and at the same time the complainants have

filed a complaint with the ORS. This provision is particularly needed because the ORS supports an almost unlimited range of programs and activities of State and local governments that are under the primary jurisdiction of other departments and agencies.

The Director has determined that the ORS should defer action on matters not resolved until the coordinating agency provides guidance in the intent of uniformity of Federal enforcement of Section 504. In this way, the ORS will hopefully avoid prematurely creating solutions to unresolved problems in this still evolving area of the law. The coordinating agency referred to is the Department of Justice pursuant to Executive Order 12250, which supersedes Executive Order 11914, which gave such authority to the old Department of HEW.

At the same time, the Director is concerned that consultation with the coordinating agency may impede resolution of complaints in the expeditious manner required by the Revenue Sharing Act. In order to ensure that coordination will take place as expeditiously as possible, and at the same time allow for flexibility, the regulations would require the Director to consult with the coordinating agency within one week. The Director would also have to make a determination as to whether the Department of Justice will act within thirty (30) days. If guidance cannot be expected within thirty (30) days, the Director shall begin to obtain preliminary information needed to investigate the complaint once the request for guidance is received. The ORS may defer making any findings until the Department of Justice has provided the necessary guidance. With these safeguards, possible deferral of action on the complaint should not result in undue delay in the processing of complaints. Accordingly, when a complaint concerning unresolved issues under Section 504 is received, the Director would immediately consult with the appropriate lead agency and act upon the guidance received.

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RESOLUTION OF THE  
WHITE MOUNTAIN APACHE TRIBE OF THE  
FORT APACHE INDIAN RESERVATION

WHEREAS, Wesley Bonito, the Director of the Tribal Education Department has requested authorization from the Tribal Council to continue his Department's administration of a swimming pool program for school children on the reservation, and

WHEREAS, he advises the Council that the program has been very successful this summer and that he wishes to continue the program for the children throughout the school year as part of their curriculum through their individual schools, and

WHEREAS, he advises the Council that the Tribe will not be responsible for providing life guard services and that each participant will be required to sign a parent release prior to using the pool which shall protect the Tribe from personal injury liability, and

WHEREAS, the Tribal Council agrees with Mr. Bonito's request and recommendation that the program continue.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes the Tribal Education Department to administer swimming pool use for school children from the various schools on the reservation.

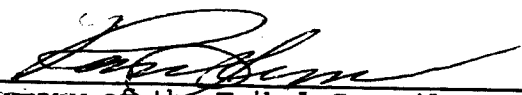
BE IT FURTHER RESOLVED by the Tribal Council that by granting authorization to the Tribal Education Department to administer the swimming pool program and to allow the Tribal Education Department to offer the use of the swimming pool to schools on the reservation does not constitute a waiver of the sovereign immunity of the Tribe for any purpose in regards to any personal injury or contractual disputes that might arise with the Tribal Education Department or the Tribal Government and the participants in the program.

The foregoing resolution was on September 17, 1985 duly adopted by a vote of 10 for and 0 against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1 (i) of the Amended Constitution and By-Laws of the Tribe, ratified by the Tribe June 27, 1958 and approved by the Secretary of the Interior on May 29, 1958, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

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SEP 25 1985

FORT APACHE INDIAN  
AGENCY  
WHITE

  
Chairman of the Tribal Council

  
Secretary of the Tribal Council