

CHAPTER 7
PROVISIONS FOR INDIVIDUALS WITH PHYSICAL DISABILITIES

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CHAPTER 7 PROVISIONS FOR INDIVIDUALS WITH PHYSICAL DISABILITIES

1. GENERAL.

a. Background.

(1) The Architectural Barriers Act of 1968 (reference 7-1) requires the Department of Defense (DoD), the General Services Administration (GSA), the Department of Housing and Urban Development (HUD), and the United States Postal Service (USPS) to prescribe standards for the design, construction, and alteration of their facilities to ensure the facilities are readily accessible to individuals with physical disabilities. Congress established the Architectural and Transportation Barriers Compliance Board (Access Board) with the Rehabilitation Act of 1973 (reference 7-2) to ensure compliance with standards issued by these four agencies and to set minimum guidelines (Guidelines) and requirements for unifying the standards. The Access Board Guidelines were implemented under 36 CFR Part 1190 (reference 7-3) and resulted in publication of the Uniform Federal Accessibility Standards (UFAS) (reference 7-4). The UFAS are still in effect under references 7-1 and 7-2 and are enforceable by the Access Board.

(2) The Americans With Disabilities Act (ADA) of 1990 (reference 7-5) provides comprehensive civil rights protection to individuals with physical disabilities in employment (Title I), state and local government services (Title II), public accommodations and commercial facilities operated by private entities (Title III), and telecommunications (Title IV). Rules implementing Title II and III requirements for buildings and facilities have been issued by the Department of Justice (DoJ) and the Department of Transportation (DoT) under 28 CFR Parts 35 and 36 and 49 CFR Parts 27, 37, and 38 (references 7-6 and 7-7), respectively. Both rules incorporate the ADA Accessibility Guidelines (ADAAG) developed and maintained by the Access Board under 36 CFR Part 1191 (reference 7-8). ADAAG sets minimum accessibility standards for new construction and alterations of commercial facilities and places of public accommodation. The ADA and ADAAG are enforceable by DoJ and DoT. Due to UFAS, the ADA and ADAAG were not originally intended to apply to the Federal government but are currently in effect and enforceable within DoD to the extent indicated in the following paragraph.

b. Current Standards. The UFAS were implemented within DoD in 1985 (reference 7-9) to ensure that military facilities are accessible to disabled civilian employees, dependents of service members, the public, retirees, and veterans. As ADAAG was written more recently than UFAS and assures better accommodations for a wider range of disabilities, DoD issued revised accessibility policy (reference 7-10) that directs the military departments (including their National Guard and Reserve Components) not only to meet the requirements of UFAS, but also to meet the requirements of ADAAG whenever ADAAG provides greater accessibility. Facilities excluded under UFAS (such as unaccompanied military personnel housing) are still excluded under this revised policy, even though ADAAG has no such exclusions. **This policy requires compliance with the current version of ADAAG only as issued by the Access Board under 36 CFR Part 1191 and excludes the full ADA implementing rules issued by DoT and DoJ.** A document explaining the differences between UFAS and ADAAG is available from DoJ (reference 7-11).

c. Previous Guidance. Previous editions of this chapter published in the Architectural and Engineering Instructions (AEI), Design Criteria, are hereby superseded.

2. DEFINITIONS. See references 7-4 and 7-8, paragraph 3.5 Definitions, for clarification of accessibility terms used herein.

3. REQUIRED ACCESSIBILITY.

a. Buildings and Facilities to be Accessible. All DoD and DoD-funded buildings and facilities where civilian workers may be employed or which may be visited by the public or limited segments of the public, worldwide, will be designed and constructed in accordance with UFAS and, to the extent greater accessibility is provided, ADAAG. This applies to new facilities and alterations of existing facilities and includes, but is not necessarily limited to, all morale, welfare, and recreational facilities, administrative facilities, educational facilities, and manufacturing facilities, regardless of whether the facilities are constructed under appropriated, nonappropriated, or other-than-military funding authorizations. Contractor-owned facilities where DoD or DA is funding all or any part of the construction will also comply with this requirement.

b. Regulatory and Statutory Considerations. In addition to the above paragraph 1 references which require DoD buildings and facilities to be accessible, DoD programs and facilities are also required to be accessible to meet affirmative action programs and nondiscrimination policies.

(1) Section 501 of the Rehabilitation Act of 1973 (reference 7-2) requires affirmative action in Federal employment of individuals with disabilities. The 29 CFR Part 1613 (reference 7-12) prohibits discrimination in employment due to the inaccessibility of buildings or facilities.

(2) Section 504, 29 U.S.C. 794, of the Rehabilitation Act of 1973 (reference 7-2) requires that handicapped individuals not be subjected to discrimination or excluded from any activity or program receiving Federal financial assistance or conducted by any Executive Agency. Appropriated and nonappropriated fund buildings and facilities are included in this requirement.

(3) DoD Directive 1020.1 (reference 7-13), in implementing Section 504 of the Rehabilitation Act of 1973, addresses "Program Accessibility" and identifies accessibility requirements for existing facilities, new construction, historic properties, and military museums which require accessibility in activities and programs that receive financial assistance from DoD. If the decision is made to alter or construct a Federal building or facility for these purposes, such alteration or construction will comply with UFAS and ADAAG as stated above. If a building or facility is not Federally owned, compliance with ADAAG is required.

c. Exceptions and Exclusions. In general, accessibility is not required to electrical or electronic/communications equipment rooms, elevator pits, penthouses, equipment and piping catwalks, general utility rooms, and mechanical equipment rooms.

(1) Privately-owned residential structures used for subsidized housing programs do not need to meet these requirements when the housing was leased by the Federal government before 1 January 1977.

(2) Military Exclusion. Any building or facility that is specifically restricted by occupancy classification to use *only* by able-bodied military personnel during the expected useful life of the building or facility need not be accessible. This exclusion does not apply to those portions of buildings or facilities that may be open to the public or that may be used by individuals with disabilities employed or seeking employment at such buildings or facilities. These portions of buildings or facilities will be accessible. The following facilities need not be accessible under this exclusion, but accessibility is still recommended because the intended use of the facilities may change over time: unaccompanied personnel housing; closed messes; vehicle and aircraft maintenance facilities where all work is performed by able-bodied military personnel; and buildings or facilities constructed under mobilization or wartime conditions.

(3) Accessible Spaces. When computing the number of required accessible spaces for a building or facility (such as assembly or parking areas), the number of able-bodied military personnel need not be counted.

(4) Historic Preservation. Special accessibility requirements may be applied to "qualified" historic buildings and facilities. See Chapter 16 of this TI.

d. Leased Buildings and Facilities.

(1) Buildings and facilities, or portions thereof, that are leased by DoD, or for use by DoD, shall be accessible in accordance with requirements issued by the Access Board under 36 CFR Chapter XI, Part 1190.31, New Construction, or Part 1190.33(c), Alterations (reference 7-14). Where both types are available for leasing, reasonable preference must be given to buildings or facilities complying with Part 1190.31.

(2) If space complying with above paragraph 3.d.(1) is not available, space may be leased only if it meets, or is altered to meet, the requirements of 36 CFR Chapter XI, Part 1190.34(b), Accessible Buildings and Facilities: Leased (reference 7-14).

(3) The following types of buildings and facilities, when leased, need not be accessible:

(a) Housing for unaccompanied military personnel.

(b) Space leased in emergencies such as mobilization, natural disasters, or war. However, the leasing authority will certify the unavailability of an accessible facility.

(d) Space leased for occupancy or use *only* by able-bodied military personnel.

4. PROCEDURES.

a. Assurance of Compliance. Officials who are responsible for contracting and the technical adequacy of designs will ensure that the provisions of this chapter are carried out and that such action is recorded. If access for individuals with physical disabilities is not provided, the specific reason why it is not will be stated and maintained in the permanent project files. To ensure that consideration is given to design for individuals with disabilities at an early planning stage, programming documents for all MILCON projects will contain a statement as to whether or not the building or facility will be accessible to individuals with physical disabilities. If a building or facility will not be accessible, the reason for this determination must be provided.

b. Waivers. If a waiver of these requirements is deemed necessary, a waiver request with full justification will be forwarded to HQUSACE (CEMP-E) for evaluation. Requests validated by CEMP-E will be forwarded to OSD (Force Management Policy) as the only waiver approval authority for DoD. Waivers will be granted only in extraordinary circumstances.

c. Cooperative Review Program. Under a cooperative review program, the Eastern Paralyzed Veterans Association (EPVA) will review any USACE project design for compliance with the criteria defined in UFAS and ADAAG. This review service has been provided to USACE Commands by EPVA since 1979. The reviews are provided without fee and are completed in an average of 15 days. Reviews by EPVA are not mandatory; however, USACE Commands are encouraged to use the services of EPVA at:

Eastern Paralyzed Veterans Association
75-20 Astoria Boulevard
Jackson Heights, NY 11370-1178

Telephone: (718) 803-3782

5. REFERENCES.

- 7-1 The Architectural Barriers Act of 1968, Public Law 90-480, August 12, 1968, as amended, 42 U.S.C. 4151-4157
- 7-2 The Rehabilitation Act of 1973, Public Law 93-112, September 26, 1973, as amended, 29 U.S.C 791, 792, 794
- 7-3 The Access Board Minimum Guidelines and Requirements for Accessible Design, August 20, 1982, implemented under 36 CFR Part 1190
- 7-4 Uniform Federal Accessibility Standards (UFAS), published in the Federal Register, August 7, 1984 (49 FR 31528), implemented as Federal Standard FED-STD 795 dated April 1, 1988
- 7-5 Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, July 26, 1990
- 7-6 28 CFR Part 35, Nondiscrimination on the Basis of Disability in State and Local Government Services (the Title II DoJ Regulation), 28 CFR Part 36, Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities (the Title III DoJ Regulation), July 26, 1991, revised July 1, 1994
- 7-7 49 CFR Parts 27, 37, and 38, Transportation for Individuals with Disabilities (the DoT Regulation), September 6, 1991
- 7-8 Americans with Disabilities Act Accessibility Guidelines (ADAAG) for Buildings and Facilities, Current Version, implemented under 36 CFR 1191, developed and maintained by the U.S. Architectural and Transportation Barriers Compliance Board (Access Board), Suite 1000, 1331 F Street, N.W., Washington, DC 20004-1111, telephone (202) 272-5434, INET address <http://www.access-board.gov>
- 7-9 Secretary of Defense Policy Memorandum, subject: Uniform Federal Accessibility Standards, May 8, 1985
- 7-10 Secretary of Defense memorandum, subject: Access for People with Disabilities, dated 20 October 1993, as implemented by the Office of the Assistant Secretary of the Army for Manpower and Reserve Affairs memorandum dated November 9, 1993, and the Office of the Assistant Secretary of the Army for Installations, Logistics and Environment memorandum dated November 18, 1993
- 7-11 ADA Title II Technical Assistance Manual, Section II 6-3000, Major differences between ADAAG and UFAS, January 24, 1992, the Department of Justice, Civil Rights Division, Office on the Americans with Disabilities Act, telephone (202) 514-0301, INET address <http://www.usdoj.gov/crt/ada/publicat.htm>
- 7-12 29 CFR Part 1613, Subpart g, Section 1613.707, revised July 1, 1984
- 7-13 DoD Directive 1020.1, Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense, March 31, 1982
- 7-14 36 CFR Chapter XI, Part 1190, Minimum Guidelines and Requirements for Accessible Design, July 1, 1994 Edition