U.S. Department of Transportation
United States Coast Guard

Commandant
United States Coast Guard

2100 Second Street, SW
Washington, DC 20593-0001
Staff Symbol: G-H
Phone: (202) 267-1562

COMDTINST 5300.1

DEC 12 2001

COMMANDANT INSTRUCTION 5300.1

Subj: COAST GUARD AMERICANS WITH DISABILITIES ACT COMPLAINT INVESTIGATIONS

1. **PURPOSE**. This Instruction establishes procedural guidance regarding the Coast Guard's responsibility to investigate maritime transportation complaints alleging violation of Title II of the Americans with Disabilities Act of 1990 (ADA).

2. **ACTION**. Area and district commanders, commanders of maintenance and logistics commands, commanding officers of headquarters units, assistant commandants for directorates, Chief Counsel, and special staff offices at Headquarters shall ensure compliance with the provisions of this Instruction. Internet release authorized.

3. **DIRECTIVES AFFECTED**. None.

4. **DISCUSSION**. Title II of the ADA requires that State and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities. Public entities generally must: follow specific architectural standards for buildings; provide access in inaccessible older buildings; communicate with people who have hearing, vision, or speech disabilities; and make reasonable modifications to policies where necessary to avoid discrimination. Also, passenger vessels must have nondiscriminatory eligibility criteria, make reasonable modifications in policies, provide auxiliary aids, and remove architectural barriers. Sometimes complaints are filed against state or local maritime transportation providers claiming inaccessibility of port facilities or public ferry systems. The Coast Guard plays an important role in ensuring that persons with disabilities are able to access the nation's maritime transportation system. Maritime Title II ADA complaints may be filed directly with G-H or referred to G-H by DOT's Departmental Office of Civil Rights (DOCR), other agencies, Senators, Congressmen, or advocacy organizations. The Civil Rights Directorate (G-H) is responsible for processing such complaints. Therefore, any command that receives a Title II ADA complaint should refer it to G-H for appropriate action.

DISTRIBUTION – SDL No. 139

	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q	r	s	t	u	v	w	x	y	z
A	2	2	2		2	2	1	2	2	1		2	2	1	1	1	1	1	1		2					
B		8	11	1	12	10	1	6	8	2	3	3	3	15	1	2	1	7	2	2	1	1	2	1	1	1
C	5	3	1	3	1	1	1	1	1		2	2	2	2	1		1	1	1	1	1	1	1	1	1	1
D	1	1	1	2	1	1	1	1		1	1	1	1	1	1	1		1	1	1	1	1	1			1
E	1	1	1	1				1		1	1	1	1	1	1		1		1	1			1	1		
F																										
G	1	1	1	1																						
H																										

NON-STANDARD DISTRIBUTION:

5. **OBJECTIVE**. The Coast Guard ADA Complaint Investigation Program shall implement Subtitle A of Title II of the ADA (42 U.S.C. 12131); the regulations of the Department of Transportation (49 C.F.R. Parts 37 and 38); and the regulations of the Department of Justice (28 C.F.R Part 35). This Instruction establishes the uniform minimum responsibilities of the Coast Guard in implementing and enforcing the ADA Complaint Investigation Program, to the end that no qualified individual with a disability shall, on the basis of disability or because a public entity's passenger vessels or facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in or be denied the benefits of services, programs, transportation services or activities of a public entity, or be subjected to discrimination by any public entity.

6. **BACKGROUND**.

   a. The Department of Justice (DOJ) has designated DOT as the Federal agency with responsibility for Title II ADA compliance of components of state and local governments for all programs, services, and regulatory activities relating to transportation (28 CFR §35.190(b)(8)).

   b. The Secretary has given all Administrators a re-delegable administrative investigative and enforcement authority (49 CFR §1.45(a)(10)).

   c. The Commandant re-delegated to the Assistant Commandant for Civil Rights (G-H), the Secretary's authority vested in him by 49 CFR §1.45(a)(10) to investigate complaints regarding state or local government maritime transportation issues under Title II of the ADA. This delegation allows the Assistant Commandant for Civil Rights to re-delegate that authority within the Coast Guard as appropriate and recognizes that the Assistant Commandant for Civil Rights shall consult with the Assistant Commandant for Marine Safety and Environmental Protection for all safety issues involved in maritime Title II ADA investigations. Enclosed is an outline of the steps G-H generally will take to process maritime Title II ADA complaints under normal circumstances. (See Enclosure 1)

7. **RESPONSIBILITY**.

   a. The Assistant Commandant for Civil Rights (G-H) investigates complaints regarding state or local government maritime transportation issues under Title II of the ADA.

   b. The Assistant Commandant for Marine Safety and Environmental Protection (G-M) consults with, provides technical advice to, and reviews any recommendations G-H may have for all safety issues related to Title II maritime complaints.

c. All commands, as requested and to the extent practicable, ensure that full cooperation is provided by all Coast Guard employees to Civil Rights Directorate personnel in the processing and resolution of complaints within the Coast Guard.

W. R. Somerville

W. R. SOMERVILLE
Assistant Commandant for Civil Rights

Encl: (1) Coast Guard ADA Complaint Investigation Process

COAST GUARD ADA COMPLAINT INVESTIGATION PROCESS

a. All complaints are date-stamped immediately upon receipt. The administrative assistant creates a case file for each complaint. All subsequent documents, correspondence, and investigative materials related to the complaint are placed in the case file in a chronological and organized manner. The Director or Deputy Director of G-HE assigns a staff program manager to have primary responsibility for the processing of the complaint.

(1) DOCR currently maintains an interim system (XTRAK) for tracking all of the external complaints of the various Operating Administrations (OA). However, OAs do not have connectivity to this system. Many OAs, including the Coast Guard, maintain parallel systems to track their own complaints. Over the past few years, with input from the modal offices of civil rights, DOCR has been in the process of developing a more advanced system (XTRAK 2000). DOCR expects to give the modes connectivity to this system soon, which should eliminate the need for parallel systems. Currently, the Coast Guard and other modes report complaints to DOCR who assigns docket numbers and inputs complaint information into the interim database. If DOCR receives the complaint directly, DOCR assigns a docket number, inputs complaint information into the interim database, and then refers the complaint to the appropriate modal office of civil rights. All initial complaint information, subsequent processing, and ultimate closure information is reported by the modes to DOCR for entry into XTRAK, and such information is also entered into G-HE's own tracking system. Once DOT's new external complaint tracking system is complete and G-HE is connected, all initial complaint information, subsequent processing, and ultimate closure information will be entered into XTRAK 2000 by G-HE's assigned staff member. XTRAK 2000 will include a multitude of complaint information (complainant/respondent/administrative data, statutes, bases, issues, dates, and notes), and will have the capability to automatically generate various reports, letters, and memoranda. When the initial complaint information is entered into XTRAK 2000, the system will generate an eight-digit docket number (i.e. 2002-0001) for the complaint. The docket number is a unique identifier for the complaint, which should be listed on the case file and all complaint-related correspondence and documents.

(2) G-HE sends a letter to the complainant letting them know that we received their correspondence and are reviewing it for completeness and jurisdiction. However, if the initial review can be conducted within a short timeframe, G-HE may delay sending the letter acknowledging the complaint and incorporate the acknowledgement with the letter to the to the complainant opening the complaint.

(3) For a complaint to be "complete," it must include: a signed, written explanation of what has happened; a way to contact the complainant; the basis of the complaint; the respondent; and sufficient information to understand the facts that led the complainant to believe that discrimination has occurred and when the discrimination took place. If G-HE determines that the complaint is not complete, the assigned staff member contacts the complainant by telephone and/or letter to obtain the necessary information. The complaint may be closed if the requested information is not received within the deadline specified in the letter (usually 30 days).

(4) Title II of the ADA prohibits discrimination on the basis of disability by public entities, whether or not they receive Federal financial assistance. Although DOJ has overall authority for coordination of Title II compliance activities, they have designated eight Federal agencies to oversee compliance activities for components of State and local governments that have responsibility over various functional areas. DOT is the designated agency for components of State and local governments that are responsible for programs, services, and regulatory activities relating to transportation. DOT has delegated this authority to the Administrators, and the Commandant has in turn re-delegated this authority to G-H. For G-H to have jurisdiction to investigate a maritime Title II ADA complaint, it must: allege discrimination which is prohibited by law; be filed by an external complainant; be alleged against a *public* entity; have occurred within 180 days; *and* be a matter committed to the Coast Guard to investigate and not to some other agency *or* be a civil rights-related matter or complaint assigned to the Coast Guard for processing and investigation by DOCR. DOJ has administrative enforcement authority for complaints alleging violation of Title III of the ADA regarding transportation services provided by *private* entities, such as cruise ships. If the complaint is not within our jurisdiction, G-H returns it to DOCR for referral to the appropriate agency or operating administration's office of civil rights. Before initiating a referral through DOCR to DOJ, such referral should be reviewed within Coast Guard's Chief Counsel.

(5) Based on our jurisdictional authority, G-H reviews the allegations in the complaint to frame the issues that will be investigated. The issues are specific actions, policies, or practices responsible for the alleged discrimination.

(6) Once G-H has determined that it has a complete complaint that is within our jurisdiction, we notify the complainant and respondent of the issues accepted and the timeframe of the upcoming investigation. Furthermore, the letter to the respondent may include a request for documentary and other information to be submitted for review in preparation for the investigation.

b. G-H consults with DOCR and G-LGL with regard to novel issues, highly sensitive or political issues, and complaints where the processing will involve more than one OA or federal agency. G-H may consult with DOCR about issues with which we are unfamiliar or would like technical assistance. In order to ensure compatibility with safety regulations and consistency between Title II maritime complaints, G-H will consult with, request technical advice from, and clear any recommendations we may have through G-M for all such safety issues.

(1) Complaints may be resolved by a variety of means informally or formally, and G-HE will consult with G-LGL prior to finalizing a resolution agreement. If early attempts at informal resolution fail, subsequent attempts continue, even through the complaint investigation and enforcement phases of the complaint process.

(2) Some complaints are able to be resolved short of a full investigation, letter of findings, and formal compliance agreement - by some form of alternative dispute resolution (ADR). ADR could include anything from formal mediation to informal settlement discussions. The appropriate relief is the same as would be required after an investigation, but without the greater time and expense of a full investigation. If the complaint is resolved without an investigation, G-H sends a closure letter to the complainant and the respondent including how the complaint was resolved, a copy of any written agreement, and when monitoring reports are due from the respondent. If early attempts at resolution fail, it may be necessary to commence a formal investigation. However, there still may be a possibility of resolving the complaint successfully prior to the issuance of formal findings.

(3) Whether or not an Investigative Plan (IP) needs to be developed for a formal investigation, and if so its extensiveness, depends on the nature and complexity of the issues involved. If an IP is necessary, it should include at least a description of the jurisdictional information, bases and issues, applicable legal theories, conclusions from any data analysis, evidence that will be required, sequence of case activities, timeframes to obtain and analyze evidence, and evidence necessary to validate anticipated defenses of respondent.

(4) General facts can be obtained from the respondent through an information letter sent at the outset of the investigation. An onsite investigation may or may not be necessary, depending on a variety of factors, including if all needed information can be provided by written documentation or if it would be better to make a personal examination of the physical environment in question. If an onsite investigation is conducted, the investigator conducts interviews, physically examines any relevant facilities, vehicles, or vessels, and gathers additional documentary evidence.

(5) The Investigative Report (IR) sets forth all the facts pertinent to a complaint, analyzes the facts in light of the issues, and recommends a determination as to the compliance status of the respondent. The IR is usually a separate document from the formal findings, and not typically released to the complainant or respondent. An IR may not be necessary if the findings can stand on their own, but should be done in all cases in which a violation is found.

(6) The staff member assigned, following written guidance documents from DOJ, DOCR[1], and/or other sources as appropriate, drafts a Letter of Findings (LOF). Review of the draft is conducted by G-H and the Coast Guard Chief Counsel. For all maritime safety issues, review is also conducted with G-M. G-H may consult with DOCR and/or the Office of General Counsel for guidance as appropriate.

(7) LOFs may fall into any one of the following categories: Compliance LOF; Non-compliance LOF; or Hybrid LOF. In the case of a *Compliance LOF*, G-HE's investigation will have found no violations of the relevant statutes, and thus the complaint will be closed (see below). With a *Non-compliance LOF*, G-HE's investigation has found one or more violations of relevant statutes, and the respondent will be given the opportunity to submit a voluntary compliance agreement within a specified timeframe (see below). *Hybrid LOFs* involve cases where we believe that the situation is almost a violation and simply want to bring our concerns to the attention of the respondent ("warning LOF"), or where we condition the no violation finding on the respondent taking or avoiding some particular action ("conditional LOF").

(8) Although DOCR no longer reviews requests for reconsideration, they have encouraged Operating Administrations to work with their offices of Chief Counsel to afford complainants with an additional level of review within their agency. DOCR has also offered technical assistance to Operating Administrations who implement these changes. G-LGL will review all requests for reconsideration. The Coast Guard may reconsider decisions if major substantive errors are brought to our attention.

c. Enforcement of compliance with the ADA may be achieved voluntarily or involuntarily.

---

[1] DOCR is working with the Office of General Counsel on draft Departmental guidance regarding LOFs, which will be provided to civil rights directors for review and comment. When the guidance is completed and approved, it will be forwarded to the Operating Administrations for implementation.

(1) The Voluntary Compliance Agreement (VCA) or Settlement Agreement is an agreement between USCG and the respondent. It outlines the remedial actions the respondent will take and corresponding completion dates for each actual or potential violation. G-HE will seek review of draft VCAs by G-LGL. G-H will also seek G-M review of draft VCAs that involve maritime safety issues. G-H monitors agreements to ensure that the respondent takes required actions within the specified timeframes. This may or may not require on-site visits. The respondent is notified when G-HE determines that there has been successful implementation of the agreement. If we determine that the respondent has failed to implement the agreement, we contact the respondent to try to resolve the matter. If we are unable to resolve the matter with the respondent, our subsequent actions will depend on how far along we were in the investigation when the agreement was developed and the enforcement language contained in the agreement. These actions might include completion of the investigation, issuance of an LOF, and/or referring the case to DOCR with a recommendation that they forward the case to DOJ to enforce the agreement as a contract in Federal District Court.

(2) If we are unable to obtain voluntary compliance, there are two options for attempting to achieve compliance - administrative enforcement proceedings or referral to DOJ for enforcement. The decision to take either of these steps will be made with the concurrence of DOCR. At this point, DOCR takes over in the lead capacity, and G-HE's role would be essentially advisory, supportive, and lending technical assistance. To terminate funds[2], an agency must enter into administrative enforcement proceedings whereby they: notify the recipient that it is in noncompliance and that voluntary compliance cannot be achieved; have a hearing where there is a finding of failure to comply; have a decision to terminate funds approved by the agency head; and file a report with the House and Senate legislative committees having jurisdiction over the programs involved. Fund termination is limited to the particular program of the particular recipient where noncompliance has been found. Alternatively, G-HE may forward a complaint to DOCR for referral to DOJ for enforcement. G-LGL shall be consulted for review and advice on all proposed referrals to DOJ. Also, prior to such referral, G-HE and/or DOCR will discuss the particular facts of the case with appropriate DOJ staff. We may ask DOJ to enforce any rights of the U.S. under any law of the U.S. or under any assurance or contract. Our referral would include a recommendation for appropriate action. The Coast Guard should be guided by a policy that emphasizes cooperation and compliance. The aim of enforcement action is to make sure that violators meet their obligations, and not to impose sanctions for their own sake.

---

[2] Note: If a Title II entity is not also a recipient of DOT or USCG Federal financial assistance, fund termination is not an option.

d. A complaint may be closed for a variety of reasons. These include if the complaint is not timely filed, withdrawal by the complainant, deferral due to pending litigation, it is a duplicate complaint, incompleteness, referral to another federal agency, no jurisdiction, unable to locate the complainant, lack of cooperation from the complainant, other administrative closure, no violation found, voluntary compliance achieved, or return to DOCR for administrative enforcement proceedings or referral to DOJ for enforcement. The reason for closure is indicated in the appropriate closure letter, which is sent to the complainant and respondent.