

**Authority:** 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3572, 3621, 3622, 3624, 3663, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

■ 2. In § 545.25, add paragraph (e) to read as follows:

**§ 545.25 Eligibility for performance pay.**

\* \* \* \* \*

(e) Inmates receiving performance pay who are found through the disciplinary process (part 541 of this subchapter) to have committed a level 100 or 200 series drug- or alcohol-related prohibited act will automatically have their performance pay reduced to maintenance pay level and will be removed from any assigned work detail outside the secure perimeter of the institution. This reduction to maintenance pay level, and removal from assigned work detail outside the secure perimeter of the institution, will ordinarily remain in effect for one year, unless otherwise authorized by the Warden.

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## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### 29 CFR Part 1615

RIN 3046–AA82

#### Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Equal Employment Opportunity Commission and Accessibility of Commission Electronic and Information Technology

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Final rule.

**SUMMARY:** The Equal Employment Opportunity Commission (EEOC or Commission) is publishing this final rule to amend its regulation to establish that all complaints under section 508 of the Rehabilitation Act of 1973, as amended (section 508), whether filed by members of the public or EEOC employees, will be processed under the procedures for section 504 public complaints. This final rule also updates the terminology used to describe how EEOC enforces section 504 of the Rehabilitation Act with respect to its own programs or activities. Finally, the final rule updates or eliminates certain sections of this regulation that are no longer relevant.

**DATES:** Effective August 11, 2008.

**FOR FURTHER INFORMATION CONTACT:** Carol R. Miaskoff or Kerry E. Leibig, Office of Legal Counsel, U.S. Equal Employment Opportunity Commission at (202) 663–4638 (voice), (202) 663–7026 (TTY) (This is not a toll-free telephone number.) This document is also available in the following formats: Large print, Braille, audio tape, and electronic file on computer disk. Requests for this document in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663–4191 (voice) or (202) 663–4494 (TTY) or to the Publications Information Center at 1–800–669–3362.

**SUPPLEMENTARY INFORMATION:** Section 508 of the Rehabilitation Act provides that each federal agency must ensure that the electronic and information technology it develops, procures, maintains, or uses is accessible to individuals with disabilities who are Federal employees or applicants, or members of the public seeking information or services from the agency. Section 508 authorizes individuals to file administrative complaints and civil actions limited to the alleged failure to procure accessible technology. In a Notice of Proposed Rulemaking (NPRM), the EEOC proposed amendments to its regulations at 29 CFR part 1615 to address the requirements of section 508 and to update terminology and eliminate certain sections that are no longer relevant. *See* 73 Fed. Reg. 9065 (Feb. 19, 2008). The Commission received no public comments in response to the NPRM and therefore has made no changes to the final rule.

#### Regulatory Procedures

##### *Executive Order 12866*

In promulgating this rulemaking, the Commission has adhered to the regulatory philosophy and applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. As indicated in the Semi-Annual Regulatory Agenda for Fall 2007, this regulation is not a significant regulation within the meaning of the Executive Order.

##### *Regulatory Flexibility Act*

The Commission certifies under 5 U.S.C. Sec. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not have a significant economic impact on a substantial number of small entities, because it applies exclusively to a federal agency and individuals accessing the services of a Federal

agency. For this reason, a regulatory flexibility analysis is not required.

##### *Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the Unfunded Mandates Reform Act of 1995.

##### *Paperwork Reduction Act*

This regulation contains no information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### List of Subjects in 29 CFR Part 1615

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

■ For the reasons set forth in the preamble, the EEOC amends 29 CFR part 1615 as follows:

#### PART 1615—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND IN ACCESSIBILITY OF COMMISSION ELECTRONIC AND INFORMATION TECHNOLOGY

■ 1. Revise the authority citation for 29 CFR part 1615 to read as follows:

**Authority:** 29 U.S.C. 794 and 29 U.S.C. 794d(f)(2).

■ 2. Part 1615 is amended as follows:

■ A. By revising the heading to read as set forth above.

■ B. By removing the term “handicap” wherever it appears and adding, in its place, the term “disability”.

■ C. By removing the term “handicaps” wherever it appears and adding, in its place, the term “disabilities”.

■ D. By removing the term “nonhandicapped persons” wherever it appears and adding, in its place, the term “individuals without disabilities”.

■ E. By removing the term “Chairman” wherever it appears and adding, in its place, the term “Chair”.

■ F. By removing the term “EEO Director” wherever it appears and adding, in its place, the term “Director of OEO”.

■ 3. Section 1615.101 is amended by redesignating the current paragraph as paragraph (a) and adding a new paragraph (b) to read as follows:

**§ 1615.101 Purpose.**

\* \* \* \* \*

(b) The purpose of this part is also to effectuate section 508 of the Rehabilitation Act, which requires that when Federal departments and agencies develop, procure, maintain, or use electronic and information technology, they shall ensure accessibility by individuals with disabilities who are Federal employees or applicants, or members of the public.

■ 4. Section 1615.102 is revised to read as follows:

**§ 1615.102 Application.**

This part applies to all programs or activities conducted by the Commission and to its development, procurement, maintenance, and use of electronic and information technology.

■ 5. Section 1615.103 is amended as follows:

■ A. The definition of “Complete complaint” is revised.

■ B. A definition of “Electronic and information technology” is added.

■ C. The definition heading “Individual with handicaps” is removed and “Individual with a disability” is added in its place.

■ D. The definition “Qualified individual with a handicap” is removed.

■ E. A definition of “Qualified individual with a disability” is added.

■ F. A definition of “Section 508” is added.

The revisions and additions read as follows:

**§ 1615.103 Definitions.**

\* \* \* \* \*

*Complete complaint* means a written statement that contains the complainant’s name and address and describes the Commission’s actions in sufficient detail to inform the Commission of the nature and date of the alleged violation of section 504 or section 508. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

*Electronic and Information technology.* Includes information technology and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term electronic and information technology includes, but is not limited to, telecommunications products (such as telephones), information kiosks and transaction machines, World Wide Web sites,

multimedia, and office equipment such as copiers and fax machines. The term does not include any equipment that contains embedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology.

\* \* \* \* \*

*Qualified individual with a disability* means:

(1) With respect to any Commission program or activity (except employment), an individual with a disability who, with or without modifications or aids required by this part, meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(2) With respect to employment, a qualified individual with a disability as defined in 29 CFR 1630.2(m), which is made applicable to this part by § 1615.140.

\* \* \* \* \*

*Section 508* means section 508 of the Rehabilitation Act of 1973, Pub. L. 93–112, Title V, § 508, as added Pub. L. 99–506, Title VI, § 603(a), Oct. 21, 1986, 100 Stat. 1830, and amended Pub. L. 100–630, Title II, § 206(f), Nov. 7, 1988, 102 Stat. 3312; Pub. L. 102–569, Title V, § 509(a), Oct. 29, 1992, 106 Stat. 4430; Pub. L. 105–220, Title IV, § 408(b), Aug. 7, 1998, 112 Stat. 1203.

**§ 1615.110 [Removed]**

■ 6. Section 1615.110 is removed and reserved.

■ 7. Section 1615.135 is added to read as follows:

**§ 1615.135 Electronic and information technology requirements.**

(a) Development, procurement, maintenance, or use of electronic and information technology.—When developing, procuring, maintaining, or using electronic and information technology, the Commission shall ensure, unless an undue burden would be imposed on it, that the electronic and information technology allows, regardless of the type of medium of the technology—

(1) Individuals with disabilities who are Commission employees to have access to and use of information and

data that is comparable to the access to and use of the information and data by Commission employees who are not individuals with disabilities; and

(2) Individuals with disabilities who are members of the public seeking information or services from the Commission to have access to and use of information and data that is comparable to the access to and use of the information and data by such members of the public who are not individuals with disabilities.

(b) Alternative means of access when undue burden is imposed.—When development, procurement, maintenance, or use of electronic and information technology that meets the standards published by the Architectural and Transportation Barriers Compliance Board at 36 CFR part 1194 would impose an undue burden, the Commission shall provide individuals with disabilities covered by this section with the information and data involved by an alternative means of access that allows the individual to use the information and data.

■ 8. Section 1615.140 is revised to read as follows:

**§ 1615.140 Employment.**

No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any program or activity conducted by the Commission. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by this Commission in 29 CFR part 1614, shall apply to employment in federally conducted programs or activities. As noted in 29 CFR 1614.203(b), the standards used to determine whether section 501 of the Rehabilitation Act has been violated in a complaint alleging non-affirmative action employment discrimination under part 1614 shall be the standards applied under Title I and Title V (sections 501 through 504 and 510) of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101, 12111, 12201) as such sections relate to employment. These standards are set forth in the Commission’s ADA regulations at 29 CFR part 1630. If a section 501 complaint is filed against the Commission in the part 1614 process and it is found to include a separate section 508 claim, the part 1614 process will be used to process the section 501 claim. The section 508 claim will be processed separately in accordance with the procedures set forth at § 1615.170.

**§ 1615.150 [Amended]**

- 9. Section 1615.150(c) and (d) are removed.
- 10. Section 1615.170 is amended as follows:
  - A. Revise paragraphs (a), (b), and (c).
  - B. Revise the first sentences of paragraphs (d)(1) and (d)(2).
  - C. Revise the third and fourth sentences of paragraph (i).
  - D. Revise paragraph (j).
  - E. Revise the first sentence of paragraph (k).
  - F. Add a new paragraph (n).

The revisions and additions read as follows:

**§ 1615.170 Compliance procedures.**

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of disability in programs or activities conducted by the Commission in violation of section 504. This section also applies to all complaints alleging a violation of the agency's responsibility to procure electronic and information technology under section 508 whether filed by members of the public or EEOC employees or applicants.

(b) The Commission shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by EEOC in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791). With regard to employee claims concerning agency procurements made in violation of section 508, the procedures set out in paragraphs (d) through (m) of this section shall be used.

(c) Responsibility for implementation and operation of this section shall be vested in the Director, Office of Equal Opportunity (Director of OEO).

(d) \* \* \*

(1) \* \* \* Any person who believes that he or she has been subjected to discrimination prohibited by this part or that the agency's procurement of electronic and information technology has violated section 508, or authorized representative of such person, may file a complaint with the Director of OEO.

(2) \* \* \* Complaints shall be filed with the Director of OEO within one hundred and eighty calendar days of the alleged acts of discrimination. \* \* \*

(i) \* \* \* An appeal shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by the Chair at EEOC headquarters. It should be clearly marked "Appeal of Section 504 decision" or "Appeal of Section 508

decision" and should contain specific objections explaining why the person believes the initial decision was factually or legally wrong. \* \* \*

(j) Timely appeals shall be decided by the Chair of the Commission unless the Commission determines that an appeal raises a policy issue which should be addressed by the full Commission.

(1) The Chair will draft a decision within 30 days of receipt of an appeal and circulate it to the Commission.

(2) If a Commissioner believes an appeal raises a policy issue that should be addressed by the full Commission, he or she shall so inform the Chair by notice in writing within ten calendar days of the circulation of the draft decision on appeal.

(3) If the Chair does not receive such written notice, the decision on appeal shall be issued.

(4) If the Chair receives written notice as described in subparagraph (2), the Commission shall resolve the appeal through a vote.

(k) The Commission shall notify the complainant of the results of the appeal within ninety calendar days of the receipt of the appeal from the complainant. \* \* \*

\* \* \* \* \*

(n) Civil actions. The remedies, procedures, and rights set forth in sections 505(a)(2) and 505(b) of the Rehabilitation Act, 29 U.S.C. 794a(a)(2) and 794a(b) shall be the remedies, procedures, and rights available to any individual with a disability filing a complaint under this section.

Dated: July 2, 2008.

**Naomi C. Earp,**  
Chair.

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**DEPARTMENT OF HOMELAND SECURITY**
**Coast Guard**
**33 CFR Part 165**

[Docket Nos. USCG-2008-0372 and USCG-2008-0301]

RIN 1625-AA00 and RIN 1625-AA87

**Safety Zones; Northeast Gateway Deepwater Port, Atlantic Ocean, MA and Security Zone; Liquefied Natural Gas Carriers, Massachusetts Bay, MA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is extending the duration of two temporary safety

zones of 500 meter radii around the primary components, two independent submerged turret-loading buoys, of Accelerate Energy's Northeast Gateway Deepwater Port, Atlantic Ocean, and its accompanying systems, as well as extending the duration of the temporary security zone around Liquefied Natural Gas Carrier (LNGC) vessels approaching, engaging, regasifying, disengaging, mooring, or otherwise conducting operations at the deepwater port facility in Massachusetts Bay. The purpose of these temporary safety zones is to protect vessels and mariners from the potential safety hazards associated with deepwater port facilities. All vessels, with the exception of deepwater port support vessels, are prohibited from entering into or moving within either of the safety zones. The security zone is necessary to protect LNGC vessels calling on the deepwater port from security threats or other subversive acts.

**DATES:** This rule extends the current temporary regulations, which have been in effect since May 7, 2008 (USCG-2008-0372) (73 FR 28039), and May 16, 2008 (USCG-2008-0301) (73 FR 31612), through July 17, 2008.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2008-0372 and USCG-2008-0301 respectively, are available online at [www.regulations.gov](http://www.regulations.gov). They are also available for inspection or copying at two locations: The Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the U.S. Coast Guard, Sector Boston, 427 Commercial Street, Boston, MA 02109, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call Chief Petty Officer Eldridge McFadden, Waterways Management Division, U.S. Coast Guard Sector Boston, at 617-223-5160. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**
**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The deepwater port facilities discussed