

Cowiche Creek, section 28 northwest corner, T14N/R17E; then

(5) Proceed upstream (northwesterly) along the North Fork of Cowiche Creek approximately 1.8 miles to the North Fork's intersection with the section 17 west boundary line, T14N/R17E; then

(6) Proceed straight north along the section 17 west boundary line to its intersection with Cox Road and then continue north along Cox Road to its intersection with Rosenkranz Road, section 17 northwest corner, T14N/R17E; then

(7) Proceed west on Rosenkranz Road, onto the Tieton map, 0.6 mile to the road's intersection with North Tieton Road, section 7 south boundary line, T14N/R17E; then

(8) Proceed north on North Tieton Road 0.5 mile to the road's intersection with Dilley Road, section 7, T14N/R17E; then

(9) Proceed west on Dilley Road 0.5 mile to the road's intersection with Franklin Road, section 7 west boundary line and the R16E and R17E common line, T14N; then

(10) Proceed north on Franklin Road 0.8 mile to the road's intersection with Schenk Road and the section 6 west boundary line, T14N/R16E; then

(11) Proceed west on Schenk Road 0.55 mile to the road's intersection with Section 1 Road, section 1, T14N/R16E; then

(12) Proceed straight north from the intersection of Schenk Road and Section 1 Road 2.2 miles to the 1,600-foot elevation line, section 36, T15N/R16E; then

(13) Proceed easterly and then southeasterly along the 1,600-foot elevation line, onto the Naches map, approximately 7.5 miles to the 1,600-foot elevation line's intersection with the section 26 north boundary line, T14N/R17E; then

(14) Proceed straight east along the section 26 north boundary line 0.25 mile to the section 26 north boundary line's intersection with the 1,400-foot elevation line, T14N/R17E; then

(15) Proceed southeasterly along the 1,400-foot elevation line approximately 2.5 miles to 1,400-foot elevation line's intersection with Young Grade Road, section 31, T14N/R18E; then

(16) Proceed east in a straight line 0.15 mile to the Congdon (Schuler) Canal, which closely parallels the 1,300-foot elevation line, section 31, T14N/R18E; and then

(17) Proceed southeasterly along the Congdon (Schuler) Canal, onto the Selah map, approximately 3.25 miles, returning to the point of beginning, section 9, T13N/R18E.

Signed: April 29, 2011.

John J. Manfreda,

Administrator.

[FR Doc. 2011-12820 Filed 5-23-11; 8:45 am]

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OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2205

Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Occupational Safety and Health Review Commission

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Occupational Safety and Health Review Commission ("OSHRC") is proposing revisions to part 2205, which it promulgated to implement section 504 of the Rehabilitation Act of 1973, as amended. These proposed revisions account for statutory and regulatory changes, and incorporate procedures for filing complaints under section 508 of the Rehabilitation Act of 1973, as amended. OSHRC is also proposing various corrections and technical amendments to this part.

DATES: Comments must be received by OSHRC on or before June 23, 2011.

ADDRESSES: You may submit comments by any of the following methods:

- *E-mail:* regsdoctet@oshrc.gov. Include "PROPOSED RULEMAKING, PART 2205" in the subject line of the message.

- *Fax:* (202) 606-5417.

- *Mail:* One Lafayette Centre, 1120 20th Street, NW., Ninth Floor, Washington, DC 20036-3457.

- *Hand Delivery/Courier:* same as mailing address.

Instructions: All submissions must include your name, return address and e-mail address, if applicable. Please clearly label submissions as "PROPOSED RULEMAKING, PART 2205." If you submit comments by e-mail, you will receive an automatic confirmation e-mail from the system indicating that we have received your submission. If, in response to your comment submitted via e-mail, you do not receive a confirmation e-mail within five working days, contact us directly at (202) 606-5410.

FOR FURTHER INFORMATION CONTACT: Ron Bailey, Attorney-Advisor, Office of the General Counsel, by telephone at (202) 606-5410, by e-mail at rbailey@oshrc.gov, or by mail at: 1120

20th Street, NW., Ninth Floor, Washington, DC 20036-3457.

SUPPLEMENTARY INFORMATION:

I. Background

Section 508 of the Rehabilitation Act requires federal agencies that develop, procure, maintain, or use electronic and information technology to "ensure, unless undue burden would be imposed on the department or agency," that this technology allows (1) federal employees who are individuals with disabilities "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 Federal employees who are not individuals with disabilities," and (2) members of the public who are individuals with disabilities and are "seeking information or services from a Federal department or agency 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." 29 U.S.C. 794d(a)(1)(A). In the event that this requirement imposes an undue burden, federal agencies must provide the relevant information and data using an "alternative means." 29 U.S.C. 794(a)(1)(B). An administrative complaint filed for an alleged violation of section 508 of the Rehabilitation Act must be filed with the agency "alleged to be in noncompliance," and must be processed by the agency using "the complaint procedures established to implement" section 504 of the Rehabilitation Act. 29 U.S.C. 794d(f)(2). Therefore, OSHRC is proposing to amend its procedures in part 2205, which effectuates section 504, to also incorporate the requirements set forth in section 508.

Exercising its statutory authority under section 508 of the Rehabilitation Act, 29 U.S.C. 794(a)(2), the Architectural and Transportation Barriers Compliance Board ("Access Board") has issued standards for electronic and information technology, 36 CFR part 1194. These standards define electronic and information technology for purposes of section 508 and provide the technical and functional performance criteria necessary to implement the accessibility requirements specified above. As detailed below, in amending part 2205, OSHRC relies on the definitions and requirements set forth in the Access Board's standards.

Turning to the specific amendments, OSHRC proposes adding a sentence to § 2205.101 ("Purpose") indicating that part 2205 effectuates section 508 and summarizing the purpose of that

section. OSHRC also proposes adding a clause to § 2205.102 (“Application”) indicating that part 2205 applies to the agency’s “development, procurement, maintenance, and use of electronic and information technology,” and a new section at § 2205.135 (“Electronic and information technology requirements”) that thoroughly explains the agency’s responsibilities under section 508. The proposed additions are consistent with language used by the Access Board. 36 CFR 1194.1, .2. Additionally, in § 2205.103 (“Definitions”), OSHRC proposes (1) adding a definition describing the source material for section 508—a similar sentence already exists describing the source material for section 504; (2) adding the definitions of “Electronic and Information technology” and “Information technology” set forth by the Access Board, 39 CFR 1194.4; and (3) revising the definition of “Complete complaint” to indicate its coverage of violations alleged under section 508, as well as section 504. Further, OSHRC proposes adding language to § 2205.111 (“Notice”) to extend the notice requirements to section 508.

OSHR also proposes revising the procedures in § 2205.170 (“Compliance procedures”) to provide more detailed instructions for filing and processing complaints and appeals alleging violations of section 504, and to incorporate instructions for those who allege violations of section 508. As noted, section 508 directs agencies to use the same procedures for processing section 508 complaints as they use for section 504 complaints. The EEOC, however, recently explained in its own notice of rulemaking that “[t]he part 1614 process is reserved for complaints alleging employment discrimination,” and that an allegation under section 508 of “discrimination in access to electronic and information technology * * * is outside the scope of part 1614.” Therefore, the proposed revisions to § 2205.170(a) and (b) make clear that part 1614 is not applicable to section 508 complaints, but that OSHRC’s procedures specifically set forth in its regulations are applicable to both section 504 and 508 complaints.

In addition to amendments resulting from section 508, OSHRC is proposing the following deletions, and corrections and amendments to part 2205. As to the proposed deletions, several provisions include compliance deadlines that have already expired. Section 2205.110 requires that OSHRC complete, by August 24, 1987, a self-evaluation of policies and practices that do not or may not meet the requirements of the regulation. It further requires that a

description of areas examined, problems identified, and modifications made be kept on file for at least three years. Also, paragraph (c) of § 2205.150 requires OSHRC to “comply with the obligations established under [paragraphs (a) and (b)] by October 21, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by August 22, 1989, but in any event as expeditiously as possible”; and paragraph (d) of that provision requires OSHRC to “develop, by February 23, 1987, a transition plan setting forth the steps necessary to complete [structural changes to facilities]” in the event that such changes are required. Because the latest of these given time frames has long passed, § 2205.110 and paragraphs (c) and (d) of § 2205.150 should be deleted.

Also, the cross-references in several provisions are outdated. The fourth definition of “qualified handicapped person,” found at § 2205.103, cross-references 29 CFR 1613.702(f), and two other provisions—§§ 2205.140 and .170(b)—cross-reference 29 CFR part 1613. Part 1613, however, was superseded by part 1614 in 1992. Federal Sector Equal Employment Opportunity, 57 FR 12634 (Apr. 10, 1992) (final rule). The current version of § 1614.203(b) cross-references and adopts all definitions in part 1630, and the definition of “qualified individual with a disability” is at 29 CFR 1630.2(m). Therefore, the cross-reference in § 2205.103 should be changed to 29 CFR 1630.2(m), and the cross-reference to part 1613 in §§ 2205.140 and .170(b) should be changed to part 1614. Further, § 2205.151 cross-references 41 CFR 101–19.600 to 101–19.607, which previously set forth the standard for the Architectural Barriers Act, 42 U.S.C. 4151–4157. In 2002, the regulatory provisions pertaining to the standard were re-designated as 41 CFR 102–76.60 to 102–76.95. Real Property Policies, 67 FR 76882 (Dec. 13, 2002) (final rule). Section 2205.151 should therefore be amended to reflect this re-designation.

Additionally, only the acronym for “telecommunication devices for deaf persons” should be used in § 2205.160, as both the phrase and acronym already appear in § 2205.103; the head of the agency should be referred to as the “Chairman” throughout the part, as this term is used in the OSH Act itself, 29 U.S.C. 661(a); and, in § 2205.103, additional legislative history should be added to the definition of “Section 504.” Finally, the 1992 amendments to the Rehabilitation Act, Public Law 102–569, 106 Stat. 4344, which replaced the term “handicap” with the term “disability,”

requires that OSHRC, in turn, similarly amend all such references in part 2205.

II. Statutory and Executive Order Reviews

Executive Orders 12866 and 13132, and the Unfunded Mandates Reform Act of 1995: OSHRC is an independent regulatory agency and, as such, is not subject to the requirements of E.O. 12866, E.O. 13132, or the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

Regulatory Flexibility Act: OSHRC certifies under the Regulatory Flexibility Act, 5 U.S.C. 605(b), that these rules, if adopted, would 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.

Paperwork Reduction Act of 1995: OSHRC has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, does not apply because these rules do not contain any information collection requirements that require the approval of OMB.

Congressional Notification: This proposed rule is not a major rule under the Congressional Review Act, 5 U.S.C. 804(2).

List of Subjects in 29 CFR Part 2205

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities, Access to electronic and information technology.

Signed at Washington, DC, on the 10th day of May 2011.

Thomasina V. Rogers,
Chairman.

For the reasons set forth in the preamble, OSHRC proposes that Chapter XX, Part 2205 of Title 29, Code of Federal Regulations, is revised to read as follows:

PART 2205—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION AND IN ACCESSIBILITY OF COMMISSION ELECTRONIC AND INFORMATION TECHNOLOGY

Sec.	
2205.101	Purpose.
2205.102	Application.
2205.103	Definitions.
2205.104–2205.10	[Reserved]
2205.111	Notice.

2205.112–2205.129 [Reserved]
 2205.130 General prohibitions against discrimination.
 2205.131–2205.134
 2205.135 Electronic and information technology requirements
 2205.136–2205.139 [Reserved]
 2205.140 Employment.
 2205.141–2205.148 [Reserved]
 2205.149 Program accessibility: Discrimination prohibited.
 2205.150 Program accessibility: Existing facilities.
 2205.151 Program accessibility: New construction and alterations.
 2205.152–2205.159 [Reserved]
 2205.160 Communications.
 2205.161–2205.169 [Reserved]
 2205.170 Compliance procedures.
 2205.171–2205.999 [Reserved]

Authority: 29 U.S.C. 794; 29 U.S.C. 794d.

§ 2205.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of disability in programs or activities conducted by Executive agencies or the United States Postal Service. This part also effectuates section 508 of the Rehabilitation Act of 1973, as amended, with respect to the accessibility of electronic and information technology developed, procured, maintained, or used by the agency.

§ 2205.102 Application.

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

§ 2205.103 Definitions.

For purposes of this part, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters,

notetakers, written materials, and other similar services and devices.

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

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Individual with a disability means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(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 psychological 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, and drug addiction and alcoholism.

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

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

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

Information technology means any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. The term information technology includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

Qualified individual with a disability means—

(1) With respect to any agency program or activity under which a

person is required to perform services or to achieve a level of accomplishment, an individual with a disability who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

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

(3) *Qualified individual with a disability* is defined for purposes of employment in 29 CFR 1630.2(m), which is made applicable to this part by § 2205.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

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

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 2205.104–2205.110 [Reserved]

§ 2205.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the Chairman finds necessary to apprise such persons of the protections against discrimination assured them by section 504 or the

access to technology provided under section 508 and this regulation.

§§ 2205.112–2205.129 [Reserved]

§ 2205.130 General prohibitions against discrimination.

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

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

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

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, or services that are as effective as those provided to others;

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

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

(2) The agency may not deny a qualified individual with a disability the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with disabilities to discrimination on the basis of disability; or

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

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

(i) Exclude individuals with disabilities from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

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

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

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

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

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

§§ 2205.131–2205.134 [Reserved]

§ 2205.135 Electronic and information technology requirements.

(a) In accordance with section 508 and the standards published by the Architectural and Transportation Barriers Compliance Board at 36 CFR part 1194, the agency shall ensure, absent an undue burden, that the electronic and information technology developed, procured, maintained, or used by the agency allows:

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

and data that is comparable to the access to and use of information and data by agency employees who are individuals without disabilities; and

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

(b) When development, procurement, maintenance, or use of electronic and information technology that meets the standards at 36 CFR part 1194 would impose an undue burden, the agency shall provide individuals with disabilities covered by this section with the information and data involved by an alternative means of access that allows the individuals to use the information and data.

§§ 2205.136–2205.139 [Reserved]

§ 2205.140 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 agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1614, shall apply to employment in federally conducted programs or activities.

§§ 2205.141–2205.148 [Reserved]

§ 2205.149 Program accessibility: discrimination prohibited.

Except as otherwise provided in § 2205.150, no qualified individual with a disability shall, because the agency's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 2205.150 Program accessibility: existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph (a) does not—

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

(2) In the case of historic preservation programs, require the agency to take any

action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with this paragraph (a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Chairman or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of paragraph (a) of this section in historic preservation programs, the agency shall

give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property is not required because of paragraph (a)(2) or (3) of this section, alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with disabilities into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

§ 2205.151 Program accessibility: new construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with disabilities. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 102–76.60 to 102–76.95, apply to buildings covered by this section.

§§ 2205.152–2205.159 [Reserved]

§ 2205.160 Communications.

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

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

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

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, TDD's or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Chairman or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the program or activity.

§§ 2205.161–2205.169 [Reserved]

§ 2205.170 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 agency in violation of section 504. Paragraphs (c) through (j) of this section also apply 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 agency employees or applicants.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c)(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 an authorized representative of such person, may file a complaint with the Executive Director.

(2) The Executive Director shall be responsible for coordinating implementation of this section. Complaints shall be sent to Executive Director, Occupational Safety and Health Review Commission, One Lafayette Centre, 1120 20th Street, NW., 9th Floor, Washington, DC 20036–3457. Complaints shall be filed with the Executive Director within 180 days of the alleged act of discrimination. A complaint 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 agency. The agency may extend this time period for good cause.

(d)(1) The agency shall accept a complete complaint that is filed in accordance with paragraph (c) of this section and over which it has jurisdiction. The Executive Director shall notify the complainant and the respondent of receipt and acceptance of the complaint.

(2) If the agency receives a complaint that is not complete, the Executive Director shall notify the complainant, within 30 days of receipt of the incomplete complaint, that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the Executive Director shall dismiss the complaint without prejudice and shall so inform the complainant.

(3) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(e) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by individuals with disabilities.

(f) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(g) Appeals of the findings of fact and conclusions of law or remedies must be filed with the Chairman by the complainant within 90 days of receipt from the agency of the letter required by paragraph (f) of this section. The agency may extend this time for good cause. Appeals shall be sent to the Chairman, Occupational Safety and Health Review Commission, One Lafayette Centre, 1120 20th Street, NW., 9th Floor, Washington, DC 20036–3457. 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 agency. It should be clearly marked "Appeal of Section 504 decision" or "Appeal of Section 508 decision" and should contain specific objections explaining why the complainant believes the initial decision was factually or legally wrong. Attached to the appeal letter should be a copy of the initial decision being appealed.

(h) Timely appeals shall be accepted and decided by the Chairman. The Chairman shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the Chairman determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(i) The time limits cited in paragraphs (f) and (h) of this section may be extended with the permission of the Assistant Attorney General.

(j) The agency may delegate its authority for conducting complaint investigations to other Federal agencies or may contract with non-Federal entities to conduct such investigations, except that the authority for making the final determination may not be delegated.

§§ 2205.171–2205.999 [Reserved]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–0277]

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Special Local Regulations for Marine Events; Lake Gaston, Enterprise, NC

AGENCY: Coast Guard, DHS.