

Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because this rule applies to agencies and individual researchers. This regulation does not have any federalism implications.

#### List of Subjects in 36 CFR Part 1253

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend part 1253 of title 36, Code of Federal Regulations, as follows:

#### PART 1253—LOCATIONS OF RECORDS AND HOURS OF USE

1. The authority citation for part 1253 continues to read as follows:

**Authority:** 44 U.S.C. 2104(a).

2. Amend § 1253.6 by revising paragraphs (d) and (l) to read as follows:

##### § 1253.6 Records centers.

\* \* \* \* \*

(d) NARA—Southeast Region (Atlanta) is located at 4712 Southpark Blvd., Ellenwood, GA 30294. The hours are 7:30 a.m. to 3 p.m., Monday through Friday. The telephone number is 404-736-2820.

\* \* \* \* \*

(l) NARA—Pacific Region (Riverside) is located at 23123 Cajalco Road, Perris, CA 92570-7298. The hours are 8:45 a.m. to 3 p.m., Monday through Friday for scheduled appointments. The telephone number is 951-956-2000.

\* \* \* \* \*

Dated: May 8, 2006.

**Allen Weinstein,**

*Archivist of the United States.*

[FR Doc. E6-7263 Filed 5-11-06; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 52 and 70

[EPA-R07-OAR-2006-0380; FRL-8169-2]

#### Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve a revision to the Missouri State Implementation Plan (SIP) and Operating Permits Program. EPA

proposes to approve a revision to the Missouri rule entitled "Submission of Emission Data, Emission Fees, and Process Information." This revision will ensure consistency between the state and the Federally-approved rules.

**DATES:** Comments on this proposed action must be received in writing by June 12, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R07-OAR-2006-0380 by one of the following methods:

1. <http://www.regulations.gov>: Follow the online instructions for submitting comments.

2. E-mail: [algie-eakin.amy@epa.gov](mailto:algie-eakin.amy@epa.gov).

3. Mail: Amy Algie-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. Hand Delivery or Courier: Deliver your comments to: Amy Algie-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

#### FOR FURTHER INFORMATION CONTACT:

Amy Algie-Eakin at (913) 551-7942, or by e-mail at [algie-eakin.amy@epa.gov](mailto:algie-eakin.amy@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that

are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: May 1, 2006.

**James B. Gulliford,**

*Regional Administrator, Region 7.*

[FR Doc. 06-4433 Filed 5-11-06; 8:45 am]

BILLING CODE 6560-50-P

#### LEGAL SERVICES CORPORATION

#### 45 CFR Part 1624

#### Prohibition Against Discrimination on the Basis of Disability

**AGENCY:** Legal Services Corporation.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** This Notice of Proposed Rulemaking (NPRM) proposes to amend the Legal Services Corporation's regulation on prohibitions against discrimination on the basis of disability. These proposed changes are intended to improve the utility of the regulation for LSC, its grantees and other interested persons, by updating the terminology used throughout the regulation, by adding a reference to compliance with the Americans with Disabilities Act and by adding language to the enforcement provision setting forth LSC policy regarding investigation of complaints of violation of this regulation.

**DATES:** Comments on this NPRM are due on June 26, 2006.

**ADDRESSES:** Written comments may be submitted by mail, fax or e-mail to Mattie Cohan Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007; 202-295-1624 (ph); 202-337-6519 (fax); [mcondray@lsc.gov](mailto:mcondray@lsc.gov).

**FOR FURTHER INFORMATION CONTACT:** Mattie Cohan Condray, Senior Assistant General Counsel, 202-295-1624 (ph); [mcondray@lsc.gov](mailto:mcondray@lsc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), as amended, prohibits discrimination on the basis of handicap by recipients of Federal assistance. As recipients of federal assistance, Legal Services Corporation (LSC) grant recipients are subject to the non-discrimination requirements of Section 504. At the same time, while the Corporation is not obligated to enforce Section 504 of the Rehabilitation Act (since it is not an agency, department or instrumentality of the Federal

government), it does have the authority to ensure that LSC grant recipients comply with its provisions. LSC chose to exercise this authority and adopted the Part 1624 regulation implementing the non-discrimination requirements in Section 504 in 1979. The regulation has not been amended since that time.

On October 29, 2005, the LSC Board of Directors directed that LSC initiate a rulemaking to consider revisions to LSC's regulation at 45 CFR Part 1624. The rulemaking proceeding is intended to provide the opportunity for an unlimited and thorough review of the regulation with the intent of updating and improving the rule as appropriate. At the Board's further direction, prior to the development of this Notice of Proposed Rulemaking ("NPRM"), LSC convened a Rulemaking Workshop<sup>1</sup> to consider revisions to this Part.

LSC convened a Rulemaking Workshop on December 13, 2005 to discuss Part 1624. The following persons participated in the Workshop: John "Chip" Gray, South Brooklyn Legal Services; John Herrion, United Spinal Association; Linda Perle, Center for Law and Social Policy; Don Saunders, National Legal Aid and Defender Association; Helaine Barnett, LSC President (welcoming remarks only); Karen Sarjeant, LSC Vice President for Programs and Compliance; Charles Jeffress, LSC Chief Administrative Officer; Mattie Condray, LSC Office of Legal Affairs; Curtis Goffe, LSC Office of Compliance and Enforcement; Tillie Lacayo, LSC Office of Program Performance; Mark Freedman, LSC Office of Legal Affairs; and Treefa Aziz, LSC Office of Government Relations and Public Affairs.

The discussion was wide-ranging and open. The highlights of the discussion are summarized as follows. There was a general assessment that grantees appear to be in compliance with the regulation and that LSC does not receive many complaints of non-compliance. It was noted that most of the complaints that do come to LSC are from grantee staff and are related to employment discrimination, rather than accessibility of services for applicants or clients with disabilities. LSC's staff practice is to refer such complainants to the

appropriate Federal, state or local agency. At the same time, it was noted that the language of the regulation could be updated in places and that there are new assistive technologies which could be referenced in the regulation.

The participants discussed the fact that LSC's enforcement expertise and resources are limited and that claimants, with the passage of the Americans with Disabilities Act ("ADA"), have recourse to other agencies and private actions for the pursuit of redress for discrimination on the basis of disability. The notion that the regulation could be amended to reflect these facts was raised. In addition, the participants also discussed other avenues of raising awareness of accessibility issues, such as the issuance of guidance from LSC in the form of a Program Letter, focusing on accessibility in program visits and in competition, better sharing of best practices and emphasis on opportunities through LSC's Technology Initiative Grant Program.

At its meeting on January 27, 2006, LSC management made a presentation to the Operations and Regulations Committee of the LSC Board of Directors on the Rulemaking Workshop. The Committee then voted to recommend that the Board of Directors directed LSC to continue the rulemaking and develop an NPRM, proposing such changes as deemed appropriate. On January 28, 2006, the Board of Directors voted to accept the recommendation of the Operations and Regulations Committee.

A Draft NPRM was then presented to the Operations and Regulations Committee at its meeting on April 28, 2006. The Committee voted to recommend that the Board of Directors approve this NPRM for publication. The following day the Board of Directors voted to accept the Committee's recommendation and directed LSC to issue this NPRM for public comment.

#### Summary of Proposed Changes

LSC is proposing only relatively minor changes to the regulation, but LSC believes that these changes will improve the utility of the regulation for LSC, its grantees and other interested persons. First, LSC is proposing to update the nomenclature used throughout the regulation to refer to "person with a disability" or "persons with disabilities" instead of "handicapped person(s)." This change is not intended to create any substantive change in meaning, but rather is intended to reflect a more current terminology. Second, LSC is proposing to add a reference to compliance with the Americans with Disabilities Act to the regulation. This change is discussed

in greater detail in the section-by-section analysis section under the discussion of proposed section 1624.1. Third, LSC is proposing to add language to the enforcement provision setting forth LSC policy regarding investigation of complaints of violation of this regulation. This change is discussed in greater detail in the section-by-section analysis section under the discussion of proposed section 1624.8. LSC is also proposing to make a number of technical and grammatical corrections to the regulation.

In addition, LSC is proposing to eliminate the current section 1624.7 of the regulation on self-evaluation. This section required legal services programs to evaluate by January 1, 1980, their facilities, practices and policies to determine the extent to which they complied with the requirements of this Part. This section does not contain a continuing requirement for self-evaluation and, as such, is now obsolete. LSC is thus proposing to eliminate it. Under section 1624.5, grantees are required to certify facility accessibility prior to entering into leases or purchases of office space (or, if the facility will not be accessible, provide a detailed statement as to why the facility is not accessible and describe steps that the grantee will take to make sure its services are accessible). This requirement ensures that facilities are, to the maximum extent feasible, accessible to persons with disabilities and ensures that grantees are taking accessibility issues into consideration in providing services.

#### Section-by-Section Analysis

##### *Section 1624.1—Purpose*

LSC is proposing to change the terms "handicapped persons" as they appear in this section to "persons with disabilities." In addition, LSC is proposing to add language to make reference to the ADA. The new language would note that requirements of this Part apply in addition to any responsibilities legal services programs may have under applicable requirements of the Americans with Disabilities Act and applicable implementing regulations of the Department of Justice and the Equal Employment Opportunity Commission. The proposed language is not intended to impose any new obligations on grantees with respect to LSC-related regulatory compliance matters, nor assume LSC authority for enforcing the ADA that LSC does not possess.

<sup>1</sup> Under LSC's Rulemaking Protocol, a Rulemaking Workshop is a meeting at which the participants (which may include LSC Board members, staff, grantees and other interested parties) "hold open discussions designed to elicit information about problems or concerns with the regulation (or certain aspects thereof) and provide an opportunity for sharing ideas regarding how to address those issues. \* \* \* [A] Workshop is not intended to develop detailed alternatives or to obtain consensus on regulatory proposals." 67 FR 69762, 69763 (November 19, 2002).

### Section 1624.2—Application

LSC is not proposing any changes to this section.

### Section 1624.3—Definitions

LSC is proposing to change the term “handicapped person” to “person with a disability” in section 1624.3(c)(1). Similarly, LSC proposes to change the term “qualified handicapped person” in section 1624.3(d) to “qualified person with a disability.” In neither case is the proposed change intended to create any substantive change to the regulation, but rather to reflect updated and preferred nomenclature.

LSC is also proposing to add a definition of the term “auxiliary aids and/or other assistive technology.” Under section 1624.4, grantees with more than fifteen employees are required to provide appropriate “auxiliary aids” when necessary to clients and applicants to make services accessible. Although the current regulation uses the term “auxiliary aids,” it does not contain a formal definition of the term in the definition section. Rather, section 1624.4 provides that for the purposes of that section, “auxiliary aids include, but are not limited to, brailled and taped material, interpreters, telecommunications equipment for the deaf, and other aids for persons with impaired vision and hearing.” Although this informal definition of “auxiliary aids” appears to be limited to aids for persons with impaired vision or hearing, the provision of the regulation which requires their use calls for auxiliary aids for persons “with impaired sensory, manual or speaking skills,” which is broader than simply vision or hearing impairments. LSC believes that this discrepancy should be rectified. In addition, although the term “auxiliary aids” is not used in the section on employment (1624.6), a similar concept appears there. Under section 1624.6(e), grantees are required to make reasonable accommodations for otherwise qualified employees and job applicants with disabilities. The regulation specifies that, among other things, “reasonable accommodations” include (but are not limited to) “the modification of equipment or devices, the provision of readers or interpreters and other similar actions.”

Rather than continue to have these similar concepts set forth in different parts of the regulation with different terminology, LSC is proposing to use the single term “auxiliary aids and/or other assistive technology” in both sections and to add a definition of that term to the definitions section. Since the

original adoption of the regulation in 1979 there have been significant advances in technology which are available to persons with disabilities to help them access and benefit from legal services programs’ services. The proposed definition is based on a definition of “assistive technologies” found in the Individuals with Disabilities Education Act, 20 U.S.C. 1400, *et seq.*, and is intended to broadly refer to the range of aids or technologies which grantees can make available to applicants, clients and employees with disabilities, as appropriate and necessary, to comply with the requirements of this Part. LSC seeks comment on whether additional specific assistive technologies should be referenced in the list of non-exhaustive examples in the definition, and if so, which ones.

### Section 1624.4—Discrimination Prohibited

LSC is proposing two notable amendments to this section. First, in each instance in which the term “handicapped person” or “handicapped persons” appears, LSC proposes to replace it with “person with a disability” or “persons with disabilities” as grammatically appropriate. As noted above, LSC intends no substantive change, but rather to reflect updated and preferred nomenclature. LSC is also proposing to use the term “auxiliary aids and/or other assistive technologies” instead of the term “auxiliary aids” in section 1624.4(d)(1) and (2) and to delete the text appearing at 1624.4(d)(3). As discussed above, LSC believes that users of the regulation will be better served by having a formal definition of the term in the definitions section of the regulation than an informal definition elsewhere. In addition, LSC believes that expanding the term to include “other assistive technologies,” combined with the proposed definition, will better reflect the range of systems and devices existing in the market that grantees may choose from to help make their services accessible to persons with disabilities.

### Section 1624.5—Accessibility of Legal Services

LSC is proposing two notable amendments to this section. First, in each instance in which the term “handicapped person” or “handicapped persons” appears, LSC proposes to replace it with “person with a disability” or “persons with disabilities” as grammatically appropriate. As noted above, LSC intends no substantive change, but rather to reflect updated and preferred

nomenclature. Second, LSC is proposing to replace the reference to “the appropriate Regional Office” in section 1624.5(c) with “LSC.” At the time Part 1624 was originally adopted LSC had Regional Offices, but it no longer does. All LSC business is conducted out of its Washington, D.C. offices. As such, the statement required by section 1624.5(c) cannot be submitted to a “Regional Office” any longer and such statements are simply submitted to LSC. The regulation should reflect this fact.

### Section 1624.6—Employment

LSC is proposing two notable amendments to this section. First, in each instance in which the term “handicapped person” or “handicapped persons” appears, LSC proposes to replace it with “person with a disability” or “persons with disabilities” as grammatically appropriate. As noted above, LSC intends no substantive change, but merely the use of updated and preferred nomenclature.

LSC is also proposing to use the term “auxiliary aids and/or other assistive technologies” instead of the words “readers or interpreters” in section 1626(e)(1). As discussed above, LSC believes that users of the regulation will be better served by using a standardized and formally defined term. LSC believes that using the term “auxiliary aids and/or other assistive technologies” in this section, combined with the proposed definition of that term, will better reflect the range of systems and devices existing in the market that grantees may choose from to make reasonable accommodations in employment for otherwise qualified applicants and employees with disabilities.

### Section 1624.7—Enforcement

The current regulation specifies only that LSC’s enforcement procedures at 45 CFR part 1618 shall apply to alleged violations of this Part. Under part 1618, LSC is obligated to investigate complaints of violations of the LSC Act, appropriations acts, LSC regulations or grant assurances and to work with grantees to resolve matters informally when possible. Ultimately, if no informal resolution is agreed upon, LSC’s enforcement powers involve reducing or eliminating funding generally. LSC does not have authority to directly order “injunctive relief” however, as do other Federal, state and local agencies charged with ADA and other disability-based discrimination law enforcement. Moreover, LSC’s Office of Compliance and Enforcement, although taking those complaints of disability-based discrimination it

receives seriously, has limited resources available and does not generally have significant expertise in investigating these types of claims.

In light of the above, LSC's policy when such complaints have been filed with the Office of Compliance and Enforcement has been to recommend that complainants pursue claims with appropriate Federal, state or local agencies which may be in a better position to investigate their claims and order the relief being sought. In cases where a claim is filed with another agency, LSC generally defers to that investigation during its pendency and relies upon the findings of the other agency in resolving the complaint filed with LSC. LSC has found this policy to be efficient and effective. Accordingly, LSC is proposing to explicitly incorporate this policy into the regulation. LSC believes this action will clarify expectations for LSC enforcement staff, grantees, and potential claimants alike. Of course, LSC retains the discretion and authority to conduct its own investigations into any claim of disability-based discrimination grounded in this Part or the grant assurances and make its own findings upon the conclusion of such investigation, irrespective of whether a complaint based on the same circumstances is pending at another agency.

#### List of Subjects in 45 CFR Part 1624

Civil rights, Grant programs—law, Individuals with disabilities, Legal services.

For reasons set forth above, and under the authority of 42 U.S.C. 2996g(e), LSC proposes to revise 45 CFR part 1624 as follows:

### PART 1624—PROHIBITION AGAINST DISCRIMINATION ON THE BASIS OF DISABILITY

Sec.

- 1624.1 Purpose.
- 1624.2 Application.
- 1624.3 Definitions.
- 1624.4 Discrimination prohibited.
- 1624.5 Accessibility of legal services.
- 1624.6 Employment.
- 1624.7 Enforcement.

**Authority:** 49 U.S.C. 794; 42 U.S.C. 2996f(a) (1) and (3).

#### § 1624.1 Purpose.

The purpose of this part is to assist and provide guidance to legal services programs supported in whole or in part by Legal Services Corporation funds in removing any impediments that may exist to the provision of legal assistance to persons with disabilities eligible for such assistance in accordance with

section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. section 794 and with sections 1007(a)(1) and (3) of the Legal Services Corporation Act, as amended, 42 U.S.C. sections 2996f(a)(1) and (3), with respect to the provision of services to and employment of persons with disabilities. The requirements of this Part apply in addition to any responsibilities legal services programs may have under applicable requirements of the Americans with Disabilities Act and applicable implementing regulations of the Department of Justice and the Equal Employment Opportunity Commission.

#### § 1624.2 Application.

This part applies to each legal services program receiving financial assistance from the Legal Services Corporation.

#### § 1624.3 Definitions.

As used in this part, the term:

(a) *Legal services program* means any recipient, as defined by § 1600.1 of this chapter, or any other public or private agency, institution, organization, or other entity, or any person to which or to whom financial assistance is extended by the Legal Services Corporation directly or through another agency, institution, organization, entity or person, including any successor, assignee, or transferee of a legal services program, but does not include the ultimate beneficiary of legal assistance;

(b) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property;

(c) (1) *Person with a disability* means any person who:

(i) Has a physical or mental impairment which substantially limits one or more major life activities,

(ii) Has a record of such an impairment, or

(iii) Is regarded as having such an impairment;

(2) As used in paragraph (c)(1) of this section the phrase:

(i) *Physical or mental impairment means:* Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities; The phrase 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;

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

(iii) *Has a record of such 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;

(iv) *Is regarded as having an impairment means:*

(A) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a legal services program as constituting such a limitation;

(B) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairments; or

(C) Has none of the impairments defined in paragraph (c)(2)(i) of this section but is treated by a legal services program as having such an impairment;

(d) *Qualified person with a disability* means:

(1) With respect to employment, a person with a disability who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to other services, a person with a disability who meets the eligibility requirements for the receipt of such services from the legal services program.

(e) *Auxiliary aids and/or other assistive technologies* means any item, piece of equipment, or product system whether acquired commercially off the shelf, modified or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities. Auxiliary aids and/or assistive technologies include, but are not limited to, brailled and taped material, interpreters, telecommunications equipment for the deaf, voice recognition software, computer screen magnifiers, screen reader software, wireless amplification systems, and other aids.

#### § 1624.4 Discrimination prohibited.

(a) No qualified person 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 by any legal services

program, directly or through any contractual or other arrangement.

(b) A legal services program may not deny a qualified person with a disability the opportunity to participate in any of its programs or activities or to receive any of its services provided at a facility on the ground that the program operates a separate or different program, activity or facility that is specifically designed to serve persons with disabilities.

(c) In determining the geographic site or location of a facility, a legal services program may not make selections that have the purpose or effect of excluding persons with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity of the legal services program.

(d) (1) A legal services program that employs a total of fifteen or more persons, regardless of whether such persons are employed at one or more locations, shall provide, when necessary, appropriate auxiliary aids and/or other assistive technologies to persons with impaired sensory, manual or speaking skills, in order to afford such persons an equal opportunity to benefit from the legal services program's services. A legal services program is not required to maintain such aids at all times, provided they can be obtained on reasonable notice.

(2) The Corporation may require legal services programs with fewer than fifteen employees to provide auxiliary aids where the provision of such aids would not significantly impair the ability of the legal services program to provide its services.

(e) A legal services program shall take reasonable steps to ensure that communications with its applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

(f) A legal services program may not deny persons with disabilities the opportunity to participate as members of or in the meetings or activities of any planning or advisory board or process established by or conducted by the legal services program, including but not limited to meetings and activities conducted in response to the requirements of 45 CFR part 1620.

#### **§ 1624.5 Accessibility of legal services.**

(a) No qualified person with a disability shall, because a legal services program's facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination by any legal services program.

(b) A legal services program shall conduct its programs and activities so that, when viewed in their entirety, they are readily accessible to and usable by persons with disabilities. This paragraph does not necessarily require a legal services program to make each of its existing facilities or every part of an existing facility accessible to and usable by persons with disabilities, or require a legal services program to make structural changes in existing facilities when other methods are effective in achieving compliance. In choosing among available methods for meeting the requirements of this paragraph, a legal services program shall give priority to those methods that offer legal services to persons with disabilities in the most integrated setting appropriate.

(c) A legal services program shall, to the maximum extent feasible, ensure that new facilities that it rents or purchases are accessible to persons with disabilities. Prior to entering into any lease or contract for the purchase of a building, a legal services program shall submit a statement to LSC certifying that the facilities covered by the lease or contract will be accessible to persons with disabilities, or if the facilities will not be accessible, a detailed description of the efforts the program made to obtain accessible space, the reasons why the inaccessible facility was nevertheless selected, and the specific steps that will be taken by the legal services program to ensure that its services are accessible to persons with disabilities who would otherwise use that facility. After a statement certifying facility accessibility has been submitted, additional statements need not be resubmitted with respect to the same facility, unless substantial changes have been made in the facility that affect its accessibility.

(d) A legal services program shall ensure that new facilities designed or constructed for it are readily accessible to and usable by persons with disabilities. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to make the altered facilities readily accessible to and usable by persons with disabilities.

#### **§ 1624.6 Employment.**

(a) No qualified person with a disability shall, on the basis of disability, be subjected to discrimination in employment by any legal services program.

(b) A legal services program shall make all decisions concerning employment under any program or activity to which this part applies in a manner that ensures that discrimination

on the basis of disability does not occur, and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of disability.

(c) The prohibition against discrimination in employment applies to the following activities:

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

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

(3) Rates of pay or any other form of compensation and changes in compensation;

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

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the legal services program;

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

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

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

(d) A legal services program may not participate in any contractual or other relationship with persons, agencies, organizations or other entities such as, but not limited to, employment and referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the legal services program, and organizations providing training and apprenticeship programs, if the practices of such person, agency, organization, or other entity have the effect of subjecting qualified applicants or employees with disabilities to discrimination prohibited by this paragraph.

(e) A legal services program shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability unless the accommodation would impose an undue hardship on the operation of the program.

(1) For purposes of this paragraph (e), reasonable accommodation may include:

(i) making facilities used by employees readily accessible to and usable by persons with disabilities; and

(ii) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of auxiliary aids and/or other assistive technologies, and other similar actions.

(2) In determining whether an accommodation would impose an undue hardship on the operation of a legal services program, factors to be considered include, but are not limited to, the overall size of the legal services program with respect to number of employees, number and type of facilities, and size of budget, and the nature and costs of the accommodation needed.

(3) A legal services program may not deny any employment opportunity to a qualified employee or applicant with a disability if the basis for the denial is a need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

(f) A legal services program may not use employment tests or criteria that discriminate against persons with disabilities, and shall ensure that employment tests are adapted for use by persons who have disabilities that impair sensory, manual, or speaking skills.

(g) A legal services program may not conduct a pre-employment medical examination or make a pre-employment inquiry as to whether an applicant is a person with a disability or as to the nature or severity of a disability except under the circumstances described in 45 CFR 84.14(a) through (d)(2). The Corporation shall have access to relevant information obtained in accordance with this section to permit investigations of alleged violations of this Part.

(h) A legal services program shall post in prominent places in each of its offices a notice stating that the legal services program does not discriminate on the basis of disability.

(i) Any recruitment materials published or used by a legal services program shall include a statement that the legal services program does not discriminate on the basis of disability.

#### **§ 1624.7 Enforcement.**

(a) The procedures described in Part 1618 of these regulations shall apply to any alleged violation of this Part by a legal services program.

(b) When LSC receives a complaint of a violation of this Part, LSC policy is generally to refer such complainants promptly to the appropriate Federal, state or local agencies, although LSC retains the discretion to investigate all complaints and/or to maintain an open

complaint file during the pendency of an investigation being conducted by such other Federal, state or local agency. LSC may use, at its discretion, information obtained by such other agency as may be available to LSC, including findings of such other agency of whether discrimination on the basis of disability occurred.

**Victor M. Fortuno,**

*General Counsel and Vice President for Legal Affairs.*

[FR Doc. E6-7280 Filed 5-11-06; 8:45 am]

**BILLING CODE 7050-01-P**

## **DEPARTMENT OF DEFENSE**

### **Defense Acquisition Regulations System**

#### **48 CFR Part 201**

**RIN 0750-AF30**

#### **Defense Federal Acquisition Regulation Supplement; Contracting Officers' Representatives (DFARS Case 2005-D022)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to the designation of a contracting officer's representative. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before July 11, 2006, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2005-D022, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2005-D022 in the subject line of the message.
- Fax: (703) 602-0350.
- Mail: Defense Acquisition Regulations System, Attn: Ms. Robin Schulze, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.
- Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Robin Schulze, (703) 602-0326.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm>.

This proposed rule is a result of the DFARS Transformation initiative. The proposed DFARS changes—

- Clarify the authority of a contracting officer's representative; and
- Remove internal DoD procedures relating to the designation of a contracting officer's representative. Text on this subject will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). Additional information on PGI is available at <http://www.acq.osd.mil/dpap/dars/pgi>.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

##### **B. Regulatory Flexibility Act**

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed rule addresses internal DoD procedural matters, and makes no significant change to DoD contracting policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2005-D022.