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POSTAL SERVICE

39 CFR Part 255

Access of Persons with Disabilities to Postal Service Programs, Activities, Facilities, and Electronic and Information Technology

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending its regulations in order to implement section 508 of the Rehabilitation Act of 1973, as amended. Section 508 requires Federal agencies to ensure that the electronic and information technology (EIT) they procure allows individuals with disabilities access to EIT comparable to the access of those who are not disabled, unless the agency would incur an undue hardship. The statute was amended by the Workforce Investment Act of 1998 to add enforcement provisions and to require agencies to add a complaint process for section 508. The complaint process for members of the public who are disabled is outlined here. The complaint process for employees and applicants who are disabled is set forth in the Postal Service's Handbook EL-603, *Equal Employment Opportunity Complaint Processing*.

DATES: The rule is effective January 9, 2003.

FOR FURTHER INFORMATION CONTACT: Joan C. Goodrich, Esq., (202) 268-3047 or Christine M. Taylor, Esq., (202) 268-3017.

SUPPLEMENTARY INFORMATION:

Background

The Workforce Investment Act of 1998, Public Law 105-220, 112 Stat. 936 (1998), amending section 508 of the Rehabilitation Act of 1973, 29 U.S.C. 794d, was signed into law on August 7, 1998. In addition to the provisions outlined above, the act required the Architectural and Transportation Barriers Compliance Board (Access Board) to publish standards defining EIT and setting forth the technical and functional performance criteria necessary for accessibility to such technology. The act, which was effective August 7, 2000, also required the Access

Board to publish its final standards by February 7, 2000.

On July 13, 2000, the Military Construction Appropriations Act for Fiscal Year 2001, Public Law 106-246, which contained an amendment to section 508, was signed into law. Public Law 106-246 delayed the effective date for enforcement of section 508 to 6 months from the publication of the Access Board's final standards. The Access Board's final standards were published on December 21, 2000, in 65 FR 80500-80528. The effective date for enforcement of section 508 became June 21, 2001.

In accordance with the statutory requirements outlined above, the Postal Service published in the **Federal Register** on February 25, 2002 (67 FR 8489-93), a proposed rule adding a complaint process for section 508 to its regulations. March 27, 2002, was set as the deadline for receipt of any comments relating to the proposed rule. The Postal Service received comments from two groups concerned with the rights and interests of individuals with disabilities. These comments are discussed below. After giving thorough consideration to the comments, the Postal Service modified the proposed rule as appropriate and now publishes the final rule.

Discussion of Comments

One group commented on matters outside the scope of this rulemaking. Those comments, which addressed specific accommodations in Post Offices for the blind and visually impaired, have been passed on to the appropriate office within the Postal Service. The second group made the following comments.

1. One comment asked for clarification of how the informal complaint can be initiated, and suggested that "an informal complaint can be verbal or in writing." The comment suggested that an oral or written statement can be the means of lodging the informal complaint. The Postal Service is incorporating this comment into the rule to reflect that an informal complaint can be made orally or in writing.

2. One comment asked that the written acknowledgment of the informal complaint contain certain specific information such as "the date that the complaint was filed, a description of the complaint issue(s), notice of the complainant's right to file a formal complaint if the informal complaint is not resolved within 60 days, and notice of where to file a formal complaint." This information will be incorporated into the rule. The date of the filing of

the informal complaint and the description of issues will be added to the acknowledgment letter. Notice of a choice to file a formal complaint or to proceed in any other appropriate forum will be added to the written decision detailing the final disposition of the informal complaint. Where to file a formal complaint will also be given in the notice.

3. Several miscellaneous comments suggested editing changes which have been incorporated as appropriate.

4. One comment requested that the language requiring exhaustion of the formal complaint process be deleted. The rule provides that if the decision on the informal complaint denies relief to the complainant, "the complainant may seek relief in any other appropriate forum, including the right to file a formal complaint with the Vice President and Consumer Advocate" of the Postal Service. If the complainant files such a formal complaint, "the complainant shall exhaust the formal complaint procedure before filing suit in any other forum." The exhaustion requirement was added in order to avoid the problem of one case proceeding simultaneously in two forums—administrative and judicial. There is no change to the rule as a result of this comment.

5. One comment asked that the standards of the Architectural Barriers Act for newly constructed, altered, and leased postal facilities be stated in the rule. However, the rule's purpose is to provide a complaint process for section 508. There is no change to the rule as a result of this comment.

6. One comment requested that a nonretaliation provision be added to the rule. This comment is being incorporated into the rule and such a provision is added.

List of Subjects in 39 CFR Part 255

Civil rights, Federal buildings and facilities, Individuals with disabilities.

Accordingly, the Postal Service revises 39 CFR part 255 to read as follows:

PART 255—ACCESS OF PERSONS WITH DISABILITIES TO POSTAL SERVICE PROGRAMS, ACTIVITIES, FACILITIES, AND ELECTRONIC AND INFORMATION TECHNOLOGY

Sec.

255.1 Purpose.

255.2 Definitions.

255.3 Nondiscrimination under any program or activity conducted by the Postal Service.

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255.5 Employment.

255.6 Complaint procedures.

255.7 Special arrangements for postal services.

255.8 Access to postal facilities.

255.9 Other postal regulations; authority of postal managers and employees.

Authority: 39 U.S.C. 101, 401, 403, 1001, 1003, 3403, 3404; 29 U.S.C. 791, 794, 794d.

§ 255.1 Purpose.

(a) This part implements section 504 of the Rehabilitation Act of 1973, as amended. Section 504 prohibits discrimination on the basis of disability in programs or activities conducted by executive agencies or by the Postal Service. This part also implements section 508 of the Rehabilitation Act of 1973, as amended. Section 508 requires that executive agencies and the Postal Service ensure, absent an undue burden, that individuals with disabilities have access to electronic and information technology that is comparable to the access of individuals who are not disabled.

(b) The standards relating to electronic and information technology expressed here are intended to be consistent with the standards announced by the Architectural and Transportation Barriers Compliance Board on December 21, 2000. Those standards are codified at 36 CFR part 1194.

§ 255.2 Definitions.

(a) *Agency* as used in this part means the Postal Service.

(b) *Area/functional vice president* also includes his or her designee.

(c) *Electronic and information technology (EIT)* 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 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.

(d) *Formal complaint* means a written statement that contains the complainant's name, address, and telephone number; sets forth the nature of the complainant's disability; and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature of the alleged violation of section 504 or of section 508. It shall be signed by the complainant or by someone authorized to do so on the complainant's behalf.

(e) *Individual with a disability.* For purposes of this part, "individual with a disability" means any person who:

(1) Has a physical or mental impairment that substantially limits one or more of such person's major life activities;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment.

(f) *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.

(g) *Postal manager.* As used in this part, "postal manager" means the manager or official responsible for a service, facility, program, or activity.

(h) *Qualified individual with a disability.* For purposes of this part, "qualified individual with a disability" means:

(1) With respect to any Postal Service 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; or

(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.

(i) *Section 501* means section 501 of the Rehabilitation Act of 1973, as amended. Section 501 is codified at 29 U.S.C. 791.

(j) *Section 504* means section 504 of the Rehabilitation Act of 1973, as amended. Section 504 is codified at 29 U.S.C. 794.

(k) *Section 508* means section 508 of the Rehabilitation Act of 1973, as amended. Section 508 is codified at 29 U.S.C. 794d.

(l) *Undue burden* means significant difficulty or expense.

(m) *Vice President and Consumer Advocate* also includes his or her designee.

§ 255.3 Nondiscrimination under any program or activity conducted by the Postal Service.

In accordance with section 504 of the Rehabilitation Act, no qualified individual with a disability shall, solely

by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity conducted by the Postal Service.

§ 255.4 Accessibility to electronic and information technology.

(a) In accordance with section 508 of the Rehabilitation Act, the Postal Service shall ensure, absent an undue burden, that the electronic and information technology the agency procures allows:

(1) Individuals with disabilities who are Postal Service 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 Postal Service employees or applicants who are not individuals with disabilities; and

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

(b) When procurement of electronic and information technology that meets the standards published by the Architectural and Transportation Barriers Compliance Board would pose an undue burden, the Postal Service shall provide individuals with disabilities covered by paragraph (a) of this section with the information and data by an alternative means of access that allows the individuals to use the information and data.

§ 255.5 Employment.

No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment with the Postal Service. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973, as established by the Equal Employment Opportunity Commission in 29 CFR part 1614 shall apply to employment within the Postal Service.

§ 255.6 Complaint procedures.

(a) *Applicability.* Except as provided in paragraph (b)(1) of this section, this section applies to all section 504 allegations of discrimination based upon disability in the programs or activities conducted by the Postal Service. Except as provided in paragraph (b)(2) of this section, this section applies to all allegations of section 508 violations.

(b) *Employment complaints.*

(1) The Postal Service shall process complaints of employees and applicants

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, as amended, 29 U.S.C. 791. In accordance with 29 CFR part 1614, the Postal Service has established procedures for processing complaints of alleged employment discrimination, based upon disability, in the agency's Handbook EL-603, *Equal Employment Opportunity Complaint Processing*.

(2) The agency shall process complaints of employees and applicants alleging violations of section 508 and involving employment in accordance with the section 508 procedures which have been added to Handbook EL-603. Section 508 complaints shall be processed to provide the remedies required by section 508 of the Rehabilitation Act.

(c) *Complaints by members of the public.* Any individual with a disability who believes that he or she has been subjected to discrimination prohibited by this part or by the alleged failure of the agency to provide access to electronic and information technology may file a complaint by following the procedures described in this section. A complainant shall first exhaust informal administrative procedures before filing a formal complaint.

(1) *Informal complaints relating to Postal Service programs or activities and to EIT.*

(i) A complainant initiates the informal process by informing the responsible postal manager orally or in writing of the alleged discrimination or inaccessibility of Postal Service programs, activities, or EIT. Postal managers or employees who receive informal complaints that they lack the authority to resolve must promptly refer any such informal complaint to the appropriate postal manager, and at the same time must notify the complainant of the name, address, and telephone number of the person handling the complaint.

(ii) *Resolution of the informal complaint and time limits.* Within 15 days of receipt of the informal complaint, the responsible postal manager must send the complainant a written acknowledgement of the informal complaint. The written acknowledgment will include the date the complaint was filed and a description of the issue(s). If the matter cannot be resolved within 30 days of its receipt, the complainant must be sent a written interim report which explains the status of the informal complaint and the proposed resolution of the matter.

On or before the 60th day from the agency's receipt of the informal complaint, the appropriate area/functional vice president within the Postal Service shall send a written decision to the complainant detailing the final disposition of the informal complaint and the reasons for that disposition. The decision shall contain the notice that the complainant may challenge an informal decision which denies relief either by proceeding in any other appropriate forum or by filing a formal complaint with the Vice President and Consumer Advocate. The notice will give the address of the Vice President and Consumer Advocate. The notice shall also state that if the complainant chooses to file a formal complaint, the complainant shall exhaust the formal complaint procedures before filing suit in any other forum.

(iii) *Automatic review.* The responsible postal manager's proposed disposition of the informal complaint shall be submitted to the appropriate district/program manager for review. The district/program manager shall forward the proposed disposition to the area/functional vice president for review and issuance of the written decision. This automatic review process shall be completed such that the written decision of the area/functional vice president shall be sent to the complainant no later than the 60th day from the agency's receipt of the informal complaint.

(2) *Formal complaints.* If an informal complaint filed under paragraph (c)(1) of this section denies relief, the complainant may seek relief in any other appropriate forum, including the right to file a formal complaint with the Vice President and Consumer Advocate in accordance with the procedures in paragraph (c)(2)(i) through (iv) of this section. If the complainant files a formal complaint with the Vice President and Consumer Advocate, the complainant shall exhaust the formal complaint procedures before filing suit in any other forum.

(i) *Where to file.* Formal complaints relating to programs or activities conducted by the Postal Service or to access of Postal Service EIT may be filed with the Vice President and Consumer Advocate, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

(ii) *When to file.* A formal complaint shall be filed within 30 days of the date the complainant receives the decision of the area/functional vice president to deny relief. For purposes of determining when a formal complaint is timely filed under this paragraph (c)(2)(ii), a formal

complaint mailed to the agency shall be deemed filed on the date it is postmarked. Any other formal complaint shall be deemed filed on the date it is received by the Vice President and Consumer Advocate.

(iii) *Acceptance of the formal complaint.* The Vice President and Consumer Advocate shall accept a timely filed formal complaint that meets the requirements of § 255.2(d), if filed after fulfilling the informal exhaustion procedures of paragraph (c)(1) of this section, and over which the agency has jurisdiction. The Vice President and Consumer Advocate shall notify the complainant of receipt and acceptance of the formal complaint within 15 days of the date the Vice President and Consumer Advocate received the formal complaint.

(iv) *Resolution of the formal complaint.* Within 180 days of receipt and acceptance of a formal complaint over which the agency has jurisdiction, the Vice President and Consumer Advocate shall notify the complainant of the results of the investigation of the formal complaint. The notice shall be a written decision stating whether or not relief is being granted and the reasons for granting or denying relief. The notice shall state that it is the final decision of the Postal Service on the formal complaint.

(d) *No retaliation.* No person shall be subject to retaliation for opposing any practice made unlawful by the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791, or for participating in any stage of administrative or judicial proceedings under the statute.

§ 255.7 Special arrangements for postal services.

Members of the public who are unable to use or who have difficulty using certain postal services may be eligible under postal regulations for special arrangements. Some of the special arrangements that the Postal Service has authorized are listed in this section. No one is required to use any special arrangement offered by the Postal Service, but an individual's refusal to make use of a particular special arrangement does not require the Postal Service to offer other special arrangements to that individual.

(a) The *Postal Operations Manual* offers information on special arrangements for the following postal services:

(1) Carrier delivery services and programs.

(2) Postal retail services and programs.

(i) Stamps by Mail® or stamps by phone.

(ii) Retail service from rural carriers.
 (iii) Self-service postal centers. Self-service postal centers contain vending equipment for the sale of stamps and stamp items, and contain deposit boxes for parcels and letter mail. Many centers are accessible to individuals in wheelchairs. Information regarding the location of the nearest center may be obtained from a local Post Office.

(b) The *Domestic Mail Manual*, the *Administrative Support Manual*, and the *International Mail Manual* contain information regarding postage-free mailing for mailings that qualify.

(c) *Inquiries and requests.* Members of the public wishing further information about special arrangements for particular postal services may contact their local postal manager.

(d) *Response to a request or complaint regarding a special arrangement for postal services.* A local postal manager receiving a request or complaint about a special arrangement for postal services must provide any arrangement as required by postal regulations. If no special arrangements are required by postal regulations, the local postal manager, in consultation with the district manager or area manager, as needed, may provide a special arrangement or take any action that will accommodate an individual with a disability as required by section 504 of the Rehabilitation Act of 1973 or by this part.

§ 255.8 Access to postal facilities.

(a) *Legal requirements and policy.* (1) *ABA standards.* Where the design standards of the Architectural Barriers Act (ABA) of 1968, 42 U.S.C. 4151 *et seq.*, do not apply, the Postal Service may perform a discretionary retrofit to a facility in accordance with this part to accommodate individuals with disabilities.

(2) *Discretionary modifications.* The Postal Service may modify facilities not legally required to conform to ABA standards when it determines that doing so would be consistent with efficient postal operations. In determining whether modifications not legally required should be made, due regard is to be given to:

- (i) The cost of the discretionary modification;
- (ii) The number of individuals to be benefited by the modification;
- (iii) The inconvenience, if any, to the general public;
- (iv) The anticipated useful life of the modification to the Postal Service;
- (v) Any requirement to restore a leased premises to its original condition at the expiration of the lease, and the cost of such restoration;

(vi) The historic or architectural significance of the property in accordance with the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*;

(vii) The availability of other options to foster service accessibility; and
 (viii) Any other factor that is relevant and appropriate to the decision.

(b) *Inquiries and requests.* (1) Inquiries concerning access to postal facilities, and requests for discretionary alterations of postal facilities not covered by the design standards of the ABA, may be made to the local postal manager of the facility involved.

(2) The local postal manager's response to a request or complaint regarding an alteration to a facility will be made after consultation with the district manager or the area manager. If the determination is made that modification to meet ABA design standards is not required, a discretionary alteration may be made on a case-by-case basis in accordance with the criteria listed in paragraph (a)(2) of this section. If a discretionary alteration is not made, the local postal manager should determine if a special arrangement for postal services under § 255.7 can be provided.

§ 255.9 Other postal regulations; authority of postal managers and employees.

This part supplements all other postal regulations. Nothing in this part is intended to authorize any postal manager or employee to violate or exceed any regulatory limit, or to confer any budgetary authority on any postal official or employee outside normal budgetary procedures.

Stanley F. Mires,

Chief Counsel, Legislative.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 001128334-2292-10; I.D. 112702B]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, is withdrawing the temporary restrictions announced in a temporary rule published on December 3, 2002 (67 FR 71900). The purpose of this rule is to withdraw the restrictions and request fishermen to voluntarily remove lobster trap/pot and anchored gillnet gear in an area totaling approximately 1,600 square nautical miles (nm²) (2,965 km²), east of Portsmouth, NH, called Jeffreys Ledge, from December 5 through December 20, 2002.

DATES: Effective December 5, 2002.

ADDRESSES: Copies of the proposed and final Dynamic Area Management rules, Environmental Assessment (EA), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at <http://www.nero.nmfs.gov/whaletrp/>.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978-281-9145; or Patricia Lawson, NMFS, Office of Protected Resources, 301-713-2322.

SUPPLEMENTARY INFORMATION: The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of four species of whales (right whales, fin, humpback, and minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's Dynamic Area Management (DAM) program (67 FR 1133). The DAM program provides specific authority for NMFS to temporarily restrict the use of lobster trap and anchored gillnet fishing gear in areas north of 40° N. lat. on an expedited basis to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15-day period; (2) allow lobster trap and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to