

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 15

RIN 1601-AA05

Enforcement of Nondiscrimination on the Basis of Disability in Department of Homeland Security Programs or Activities

AGENCY: Office of the Secretary, Homeland Security.

ACTION: Interim final rule.

SUMMARY: This interim final rule establishes for the Department of Homeland Security the necessary procedures for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of disability, as it applies to programs or activities conducted by the Department of Homeland Security. It sets forth standards for what constitutes discrimination on the basis of a mental or physical disability, provides a definition for an individual with a disability and a qualified individual with a disability, and establishes a complaint mechanism for resolving allegations of discrimination.

DATES: This interim final rule is effective April 7, 2003. Written comments may be submitted by April 7, 2003.

ADDRESSES: Submit written comments (preferably an original and three copies) to Associate General Counsel (General Law), Department of Homeland Security, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Robert Coyle, (202) 282-8410, not a toll free call.

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 2002, the President signed into law the Homeland Security Act of 2002 (Pub. L. 107-296), which created the new Department of Homeland Security (DHS). Pursuant to the provisions of the Act, the new Department came into existence on January 24, 2003.

In order to establish procedures to facilitate public interaction with the DHS Office of the Secretary, DHS is issuing an initial series of proposed and interim final regulations.

II. The Interim Final Rule

This interim final rule provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended

(29 U.S.C. 794), as it applies to programs and activities conducted by the Department of Homeland Security. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies.

III. Procedural Requirements

Because the DHS came into existence on January 24, 2003, it is necessary to promptly establish procedures to facilitate the interaction of the public with the Department. Furthermore, this interim final rule parallels the existing operational regulations of other cabinet-level agencies to effectuate the provisions of section 504 of the Rehabilitation Act of 1973. Similar regulations were applicable to components being transferred to DHS from other cabinet-level agencies and the regulations are only being technically adapted for DHS, imposing no substantive requirement that is different from the existing regulations of these cabinet-level agencies. Accordingly, the Department has determined that notice and public procedure are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(B). For the same reasons, the Department has determined that this interim rule should be issued without a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

It has been determined that this rulemaking is not a significant regulatory action for the purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

This regulation has been reviewed and approved by the Attorney General pursuant to Executive Order 12250 and has also been reviewed by the Equal Employment Opportunity Commission pursuant to Executive Order 12067.

Copies of this regulation have been submitted to the appropriate authorizing committees of Congress, and this regulation will take effect no earlier than the thirtieth day after the date on which this regulation is so submitted to such committees (*See* 29 U.S.C. 794.)

List of Subjects in 6 CFR Part 15

Civil rights, Individuals with disabilities, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth above, chapter I of 6 CFR is amended by adding part 15 to read as follows:

PART 15—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF HOMELAND SECURITY

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Authority: Pub. L. 107-296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); 5 U.S.C. 301; 29 U.S.C. 794.

§ 15.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973 ("Section 504"), as amended by section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which prohibits discrimination on the basis of disability in programs or activities conducted by Executive agencies. The provisions established by this part shall be effective for all components of the Department, including all Department components that are transferred to the Department, except to the extent that a Department component already has existing section 504 regulations.

§ 15.2 Application.

This part applies to all programs or activities conducted by the Department of Homeland Security (Department), except for programs or activities conducted outside the United States that do not involve individuals with a disability in the United States.

§ 15.3 Definitions.

For purposes of this part:

(a) *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 Department. For example, auxiliary aids useful for persons with impaired vision