

Secretary at the hearing that it satisfied the requirements of paragraph (f)(1) of this section.

(4) The hearing procedures of § 27.127(b) through (c) and paragraphs (a) through (d) of this section apply to hearings held under paragraph (f)(3) of this section.

(5) While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) of this section shall remain in effect.

[44 FR 31468, May 31, 1979. Redesignated at 56 FR 45621, Sept. 6, 1991. 68 FR 51391, Aug. 26, 2003]

PART 28—ENFORCEMENT OF NON-DISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF TRANSPORTATION

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AUTHORITY: 29 U.S.C. 794

SOURCE: 56 FR 37296, Aug. 6, 1991, unless otherwise noted.

§ 28.101 Purpose.

The purpose of this part is to carry out 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 handicap in programs or activities conducted by Executive agencies, including this Department, or the United States Postal Service. 49 CFR part 27 implements section 504 in the Department's financial assistance programs.

§ 28.102 Application.

This part applies to all programs or activities conducted by the Department except for programs and activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 28.103 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 Department. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, 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 Department's alleged discriminatory actions in sufficient detail to inform the Department of the nature and date of the alleged violation of section 504. 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.

Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or

that continuing use is a real and ongoing problem.

Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

Department or *DOT* means the U.S. Department of Transportation, including the Office of the Secretary and all operating administrations.

Departmental Element (or “DOT element”) means any one of the following organizations within the Department:

- (a) Office of the Secretary (OST).
- (b) United States Coast Guard (USCG).
- (c) Federal Aviation Administration (FAA).
- (d) Federal Highway Administration (FHWA).
- (e) Federal Railroad Administration (FRA).
- (f) National Highway Traffic Safety Administration (NHTSA).
- (g) Federal Transit Administration (FTA).
- (h) Research and Special Programs Administration (RSPA).
- (i) Maritime Administration (MARAD).
- (j) St. Lawrence Seaway Development Corporation (SLSDC).

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.

Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). The term “illegal use of drugs” does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with handicaps 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*—

(i) Includes any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one

or more of the following body systems: Neurological; muscular; skeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine;

(ii) Includes any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities; and

(iii) Includes, but is not limited to, such diseases or conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, 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 Department 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 paragraph (1) of this definition but is treated by the Department as having such an impairment.

Qualified individual with handicaps means—

(1) With respect to education services provided by the U.S. Merchant Marine Academy or the U.S. Coast Guard Academy, an individual with handicaps who meets the essential eligibility requirements for participation in and receipt of such services, including the physical standards applicable to the U.S. Naval Reserve or the U.S. Coast Guard.

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(2) With respect to any other Department program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps 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 Department can demonstrate would result in a fundamental alteration in its nature. The essential eligibility requirements include the ability to participate without endangering the safety of the individual or others.

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

(4) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 28.140.

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); the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810); the Civil Rights Restoration Act of 1987 (Pub. L. 100–259, 102 Stat. 28), and Handicapped Program Technical Amendments Act of 1988 (Pub. L. 100–630, 102 Stat. 3312). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

[56 FR 37296, Aug. 6, 1991, as amended at 61 FR 32354, June 24, 1996]

§§ 28.104–28.109 [Reserved]

§ 28.110 Self-evaluation.

(a) The Department shall, by one year of the effective date of this part, evaluate its current policies and practices, and effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the Department shall pro-

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ceed to make the necessary modifications.

(b) The Department shall provide an opportunity to interested persons, including individuals with handicaps, agency employees with handicaps, and organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The Department shall, until at least three years following completion of the evaluation required under paragraph (a) of this section, or until such time as all modifications identified by the self-evaluation to be necessary to comply with section 504 have been completed, whichever occurs later, maintain on file and make available for public inspection—

(1) A description of areas examined, regulations and nonregulatory criteria reviewed, and any problems identified; and

(2) A description of any modifications made.

§ 28.111 Notice.

The Department 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 Department, and make such information available to them in such manner as the Department finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 28.112–28.129 [Reserved]

§ 28.130 General prohibition against discrimination.

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

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