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**DEPARTMENT OF STATE**

**22 CFR Part 147**

**Public Notice: 9498**

**RIN: 1400-AD87**

**Electronic and Information Technology**

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** This rule implements Section 508 of the Rehabilitation Act (Section 508) for the Department of State. Section 508 requires that when Federal departments and agencies develop, procure, maintain, or use electronic and information technology, they shall ensure that the electronic and information technology is accessible to individuals with disabilities who are Federal employees, applicants for employment, or members of the public.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Alice Kottmyer, Attorney-Adviser, 202-647-2318, [kottmyeram@state.gov](mailto:kottmyeram@state.gov).

**SUPPLEMENTARY INFORMATION:** This rule adds a new part 147, which implements Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d) (“Section 508”), as it applies to programs and activities conducted by the Department of State (“the Department”).

### *Subpart A – General Provisions*

Sections 147.1 and 147.2 provide that these rules are intended to implement Section 508, consistent with that statute and the regulations promulgated by the Access Board, at 36 CFR part 1194 (“Part 1194”). This rule applies to all development, procurement, maintenance, and use of electronic and information technology by the Department of State. Section 147.3 provides the definitions of “The Department,” “Section 508”, “Section 508 complaint”, and “the Secretary”, and adopts the definitions in 36 CFR 1194.4.

Section 147.4 provides that the Department will ensure that its employees, applicants for employment, and members of the public are provided with adequate notice of the Department’s obligations under Section 508, part 1194, and these rules.

Sections 147.5 and 147.6 generally reiterate the requirements of Section 508 regarding the prohibition against discrimination, and the requirement for ensuring that EIT is accessible (in accordance with part 1194), unless an undue burden would be imposed on the Department – in which case an alternative means of access must be provided.

### *Subpart B – Complaint Procedures*

Section 147.7 provides procedures for filing a complaint under Section 508. The procedures included therein are substantially the same procedures the Department has established in implementing Section 504 of the Rehabilitation Act of 1973 (22 CFR part 144). The relevant procedures are repeated in this rulemaking, for convenience. A Section 508 complaint must be filed with the Department’s Office of Civil Rights, must be in writing, and submitted by fax, e-mail, mail, or hand-delivery. The final, approved

complaint form, designated DS-4282, is accessible and fillable and is available on the following page: <https://eforms.state.gov/searchform.aspx>. The Department's analysis and notice pursuant to the Paperwork Reduction Act are included in the "Regulatory Analysis," below. The DS-4282 will be used for complaints not only under Section 508, but under Section 504 and Title VI of the Civil Rights Act. This is reflected in the Paperwork Reduction Act analysis, below.

An individual with a disability alleging a violation of Section 508 must file a complaint not later than 180 days after the date the complainant knew, or should have known, of the alleged violation of Section 508. Once the Department receives the complaint, it must conduct an investigation and, within 180 days of receiving the complaint, shall notify the complainant of the results of the investigation in a letter containing findings of fact and conclusions of law; a description of a remedy for each violation found; and a notice of the right to appeal within 90 days of the complainant's receipt of the notice from the Department. The Department will notify the complainant of the results of the appeal within 60 days of the receipt of the appeal request.

Section 147.8 provides that a decision from the Department on the merits of a complaint, or no notification in writing from the Department within 180 days of filing the complaint, will constitute exhaustion of the complainant's administrative remedies for purposes of 5 U.S.C. 701, *et seq.* This provision does not yet have a counterpart in the Department's Section 504 implementing procedures; however, the Department is considering adding a parallel provision to 22 CFR part 144 in the near future.

The Department published a proposed rule on January 4, 2016. See 81 F.R. 44. The Department received one comment in response to the Paperwork Reduction Act

notice, expressing support for the information collection, and received no comments on the proposed rule.

## **Regulatory Analysis**

### Administrative Procedure Act

The Department of State published this rulemaking as a proposed rule, with 60-day provision for public comment. The final rule will be in effect 30 days after publication.

### Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804 for the purposes of Congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801-808).

### Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million in any year; and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

### Regulatory Flexibility Act: Small Business

The Department of State certifies that this rulemaking will not have an impact on a substantial number of small entities. A regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Executive Order 12866 and Executive Order 13563

The Department of State has provided this final rule to the Office of Management and Budget (OMB) for its review. The Department has also reviewed the rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866, and finds that the benefits of the rule (in providing mechanisms for individuals to submit complaints of discrimination) outweigh any costs to the public, which are minimal. The Department of State has also considered this rulemaking in light of Executive Order 13563, and affirms that this proposed regulation is consistent with the guidance therein.

Executive Order 12988

The Department of State has reviewed this rule in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Orders 12372 and 13132

This rule will not have substantial direct effect on the states, on the relationships between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary

impact statement. Executive Order 12372, regarding intergovernmental consultation on federal programs and activities, does not apply to this regulation.

#### Paperwork Reduction Act

The information collection contained in this rule is pursuant to the Paperwork Reduction Act, 44 U.S.C. Chapter 35 and, although not yet in use, has been assigned an OMB Control Number. The Department submitted an information collection request to OMB for the review and approval of the Discrimination Complaint Form, DS-4282, under the PRA.

This information collection will provide a way for employees and members of the public to submit a complaint of discrimination under Section 508 and other federal statutes relating to discrimination, as described below.

#### **30-Day Notice of Proposed Information Collection:** DS-4282, Discrimination Complaint Form

The Department of State has submitted the information collection described below to OMB for approval. Direct request for additional information regarding the collection listed herein, including requests for copies of the proposed collection instrument and supporting documents, to the Office of the Legal Adviser (L/M), ATTN: Section 508 Final Rule, Suite 4325, U.S. Department of State, 2200 C Street NW, Washington DC 20520; e-mail [kottmyeram@state.gov](mailto:kottmyeram@state.gov).

- Title of the Collection: Complaint of Discrimination Under Section 504, Section 508 or Title VI.
- OMB Control No.: 1405-0220.
- Type of Request: New collection.

- Originating Office: Office of Civil Rights, U.S. Department of State.
- Form Number: Form DS-4282, Discrimination Complaint Form.
- Respondents: This information collection will be used by any Federal employee or member of the public who wishes to submit a complaint of discrimination under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); or Sections 504 or 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794 and 794d).
- Estimated number of respondents and responses: The Department estimates a total of 10 respondents, with one response per respondent, per year.
- An estimate of the total annual public burden (in hours) associated with the collection: The average burden associated with this information collection is estimated to be 1 hour per respondent. Therefore, the Department estimates the total annual burden for this information collection to be 10 hours.
- Frequency: On occasion.
- Obligation to Respond: Voluntary.

Abstract of proposed collection:

The form created by this information collection (DS-4282) will be used to present complaints of discrimination under Title VI of the Civil Rights Act of 1964; or Sections 504 or 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794 and 794d).

Methodology:

The form will be downloaded from <https://eforms.state.gov/searchform.aspx>. After completion, the form may be submitted by e-mail, mail, fax, or hand-delivery.

**List of Subjects in 22 CFR part 147**

Civil rights, Communications equipment, Computer technology, Government employees, Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

For the reasons set forth in the preamble, 22 CFR part 147 is added to subchapter O to read as follows:

## **PART 147 – ELECTRONIC AND INFORMATION TECHNOLOGY**

### **Subpart A – General Provisions**

Sec.

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AUTHORITY: 22 U.S.C. 2651a; 29 U.S.C. 794, 794d; 36 CFR part 1194.

### **Subpart A – General provisions**

#### **§ 147.1 Purpose.**

The purpose of this part is to implement section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), which requires that when Federal departments and agencies develop, procure, maintain, or use electronic and information technology, they shall ensure that the electronic and information technology is accessible to individuals with disabilities who are Federal employees, applicants for employment, or members of the public.

## **§ 147.2 Application.**

This part applies to all development, procurement, maintenance, and use of electronic and information technology (EIT), as defined in 36 CFR 1194.4.

## **§ 147.3 Definitions.**

This part incorporates the definitions in 36 CFR 1194.4. In addition, as used in this part:

*Department* means the United States Department of State and any of its passport agencies or other facilities.

*Secretary* means the Secretary of State or his or her designee.

*Section 508* means section 508 of the Rehabilitation Act of 1973, codified at 29 U.S.C. 794d, Public Law 93-112, Title V, Section 508, as added Public Law 99-506, Title VI, Section 603(a), Oct. 21, 1986, 100 Stat. 1830, and amended Public Law 100-630, Title II, Section 206(f), Nov. 7, 1988, 102 Stat. 3312; Public Law 102-569, Title V, Section 509(a), Oct. 29, 1992, 106 Stat. 4430; Public Law 105-220, Title IV, Section 408(b), Aug. 7, 1998, 112 Stat.1203.

## **§ 147.4 Notice.**

(a) The Secretary shall ensure that employees, applicants for employment, and the members of the public are provided with adequate notice of the requirements of Section 508, the Electronic and Information Technology Accessibility Standards (36 CFR part 1194), and this part, as they relate to the programs or activities conducted by the Department.

(b) The Secretary shall ensure that the home page of the Department's public-facing web site provides Department policy regarding accessibility of EIT in accordance

with Section 508 and 36 CFR part 1194, as well as an e-mail address for the public to ask questions or express concerns.

**§ 147.5 Discrimination prohibited.**

The Department must comply with EIT Accessibility Standards when it develops, procures, maintains, or uses EIT. The Department must ensure that individuals with disabilities who are Federal employees or members of the public have access to and use of information and data that is comparable to that provided to Federal employees or members of the public without disabilities, unless providing comparable access would impose an undue burden on the Department.

**§ 147.6 Electronic and information technology requirements.**

(a) *Development, procurement, maintenance, or use of EIT.* When developing, procuring, maintaining, or using EIT, the Department shall ensure, unless an undue burden would be imposed on the Department, that the EIT allows, regardless of the type of medium of the technology, that –

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

(b) In meeting its obligations under paragraph (a) of this section, the Department shall comply with the Electronic and Information Technology Accessibility Standards, 36 CFR part 1194.

(c) *Alternative means of access when undue burden is imposed.* When development, procurement, maintenance, or use of EIT that meets the standards as provided in 36 CFR part 1194 would impose an undue burden, the Department shall provide individuals with disabilities covered by this section with the relevant information and data by an alternative means of access that allows the individual to use the information and data.

(d) *Procedures for determining undue burden.* The Department procedures for finding that full compliance with 36 CFR part 1194 would impose an undue burden can be found at: <http://www.state.gov/m/irm/impact/126338.htm>.

## **Subpart B – Complaint Procedures**

### **§ 147.7 Filing a Section 508 complaint.**

(a) An individual with a disability who alleges that Department's EIT does not allow him or her to have access to and use of information and data that is comparable to access and use by individuals without disabilities, or that the alternative means of access provided by the Department does not allow the individual to use the information and data, may file a complaint with the Department's Office of Civil Rights (S/OCR).

(b) Employees, applicants for employment, or members of the general public are encouraged to contact personnel in the Department office that uses or maintains a system that is believed not to be compliant with Section 508 or 36 CFR part 1194 to attempt to have their issues addressed. Nothing in this complaint process is intended to prevent

Department personnel from addressing any alleged compliance issues when made aware of such requests directly or indirectly.

(c) A Section 508 complaint must be filed not later than 180 calendar days after the complainant knew, or should have known, of the alleged discrimination, unless the time for filing is extended by the Department. A Section 508 complaint must be submitted in writing by fax, e-mail, mail, or hand delivery to the S/OCR office, using the Form DS-4282, Discrimination Complaint Form, which can be downloaded at:

<https://eforms.state.gov/searchform.aspx..>

(d) Once a Section 508 complaint has been received, S/OCR will conduct an investigation into the allegation(s) and render a decision as to whether a Section 508 violation has occurred. Within 180 days of the receipt of a complete complaint under this part, the Secretary 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.

Upon request of the complainant, the decision will be provided in an alternate format, such as an electronic format, braille, or large print.

(e) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the Department of the notice required by § 147.7(d). The Department may extend this time for good cause.

(f) Timely appeals shall be accepted and processed by the Department.

(g) The Secretary shall notify the complainant of the results of the appeal within 60 days of the receipt of the appeal. If the Secretary determines that additional information is needed from the complainant, the Secretary shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(h) Individuals who submit a complaint must keep S/OCR updated at all times with current contact information, to include address, phone number, and working e-mail address. If the Department needs additional information and is unable, after reasonable attempts for 30 days, to contact a complainant using his or her contact information, it may consider the complaint abandoned, and may close the complaint without action. A complainant may re-submit a complaint that was closed due to the inability of the Department to contact the complainant.

(i) A Department employee who receives a Section 508 complaint or a communication that raises an issue that might reasonably be considered a Section 508 complaint, should forward such communication to S/OCR.

**§ 147.8 Final agency action.**

Either a decision by the Secretary on the merits of a complaint, or no notification

in writing from the Secretary within 180 days of filing the complaint, will constitute a final agency action and exhaustion of the complainant's administrative remedies for purposes of 5 U.S.C. 701, *et seq.*

Dated: May 9, 2016.

**John M. Robinson,**  
*Director, Office of Civil Rights,*  
*Department of State*

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