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(6) The Department may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the Department establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the Department are not, themselves, covered by this part. The Department may limit the programs or activities of a licensee or certificate holder, who is a qualified individual with handicaps, to the extent necessary to ensure the safety of that person or the safety of others.

(c) The exclusion of individuals without handicaps from the benefits of a program limited by Federal statute or Executive Order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive Order to a different class of individuals with handicaps is not prohibited by this part.

(d) The Department shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§ 28.131 Illegal use of drugs.

(a) *General.* (1) Except as provided in paragraph (b) of this section, this part does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

(2) The agency shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who—

(i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

(ii) Is participating in a supervised rehabilitation program; or

(iii) Is erroneously regarded as engaging in such use.

(b) *Health and rehabilitation services.* The agency shall not deny health services or services provided under titles I, II, and III of the Rehabilitation Act to

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an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(c) *Drug testing.* (1) This part does not prohibit the agency from adopting or administering reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual who formerly engaged in the illegal use of drugs is not engaging in current illegal use of drugs.

(2) Nothing in paragraph (c) of this section shall be construed to encourage, prohibit, restrict, or authorize the conduct of testing for the illegal use of drugs.

§§ 28.132–28.139 [Reserved]

§ 28.140 Employment.

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

(b) The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities. The provisions of this section do not apply to military personnel of the U.S. Coast Guard.

§§ 28.141–28.148 [Reserved]

§ 28.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 28.150, no qualified individual with handicaps shall, because the Department's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Department.

§ 28.150 Program accessibility: Existing facilities.

(a) *General.* The Department shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the Department to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) [Reserved]

(3) Require the Department to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where personnel of a DOT element believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the DOT element has the burden of proving that compliance with § 28.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Secretary or his or her designee, after considering all resources available for use in the funding and operation of the program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Department shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The Department may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The Department is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The Department, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any

regulations implementing it. In choosing among available methods for meeting the requirements of this section, the Department shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The Department shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible. Provided that, where major restructuring of fixed facilities to accommodate technological changes is planned to occur within five years from the effective date of this part, changes needed to comply with this section are not required to be made until the planned restructuring takes place. However, alternative means for participation by individuals with handicaps in DOT programs and activities in the most integrated setting possible during this interim waiting period shall be available.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Department shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps, agency employees with handicaps, or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the Department's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

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(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 28.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Department shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600-607, apply to buildings covered by this section, except for military facilities of the Coast Guard, which are covered by 32 CFR part 56.

§§ 28.152-28.159 [Reserved]

§ 28.160 Communications.

(a) The Department shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Department shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Department.

(i) In determining what type of auxiliary aid is necessary, the Department shall give primary consideration to the requests of the individual with handicaps.

(ii) The Department need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature to applicants or participants in programs.

(2) Where the Department communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDDs) or equally effective telecommunication systems, shall be used to communicate with persons with impaired hearing.

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(b) The Department shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Department shall provide signs at each primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information as to the location of accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Department to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where personnel of a DOT element believe that the proposed action would fundamentally alter the program or activity or would result in an undue financial and administrative burden, the DOT element has the burden of proving that compliance with § 28.160 would result in such alteration or burden. The decision that compliance would result in such alteration or burden must be made by the Secretary or his or her designee, after considering all resources available for use in the funding and operation of the program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Department shall take any other action that would not result in such an alteration or such a burden but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 28.161-28.169 [Reserved]

§ 28.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, paragraphs (c)-(k) of this section apply to all allegations of discrimination on the basis of handicap in programs of activities conducted by the Department;