

## 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 add a complaint process for employees and applicants under section 508 of the Rehabilitation Act of 1973, as amended.

**DATES:** The rule is effective August 27, 2004.

**FOR FURTHER INFORMATION CONTACT:** Joan C. Goodrich, Esq., (202) 268-3047.

**SUPPLEMENTARY INFORMATION:** 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, Public Law 105-220, 112 Stat. 536 (1998), to add enforcement provisions and to require agencies to add a complaint process for section 508. A complaint process under section 508 for members of the public who are disabled was added to part 255 through a **Federal Register** publication of a proposed rule on February 25, 2002 (67 FR 8489-8493). A final rule for the section 508 complaint process for members of the public was published in the **Federal Register** on December 10, 2002. This final rule was effective January 9, 2003.

A section 508 complaint process for employees and applicants who are disabled is now being added to part 255.

#### Section-by-Section Analysis

##### Section 255.2 Definitions

A new subparagraph (3) has been added to (h) *Qualified individual with a disability* in order to give applicants and employees the definition of a “qualified individual with a disability” under section 501 of the Rehabilitation Act.

##### Section 255.6 Processing of Complaints

The title of this section has been changed to reflect that it explains how various types of complaints will be processed and to distinguish it from the complaint procedures in paragraph (d) of this section.

(a) *Section 504 complaints, employment.*

Paragraph (a) has been renamed and now provides that section 504 complaints alleging employment discrimination and brought by employees or applicants are to be processed under the procedures established for section 501 complaints.

(b) *Section 504 complaints, members of the public.*

Paragraph (b) has been renamed and now provides that section 504 complaints alleging disability discrimination in any program or activity of the Postal Service and brought by members of the public are to be processed under the procedures of this part.

(c) *Section 508 complaints, members of the public, employees and applicants.*

Paragraph (c) has been renamed and now provides that the procedures of this part shall apply to section 508 complaints alleging failure to provide access to electronic and information technology and brought by members of the public, employees, or applicants.

(d) *Complaint Procedures.*

Paragraph (d) has been renamed and renumbered. It was previously paragraph (c). It explains the complaint procedures for section 504 complaints brought by members of the public and section 508 complaints brought by members of the public, employees, or applicants. The actual complaint procedures are unchanged.

(e) *No retaliation.*

This paragraph was renumbered. It was previously paragraph (d). It has not been changed.

#### 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

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**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 in this part 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, except for employment, 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, except for employment, an individual with a disability who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; or

(3) With respect to employment, an individual with a disability who can perform the essential functions of the job in question with or without reasonable accommodation.

(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 Processing of complaints.**

(a) *Section 504 complaints, employment*. 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, *Equal Employment Opportunity Complaint Processing*.

(b) *Section 504 complaints, members of the public*. The procedures of this part shall apply to section 504 complaints alleging disability discrimination in any program or activity of the Postal Service and brought by members of the public.

(c) *Section 508 complaints, members of the public, employees, and applicants*. The procedures of this part shall apply to section 508 complaints alleging failure to provide access to electronic and information technology and brought by members of the public or by employees or applicants. Section 508 complaints shall be processed to provide the remedies required by section 508 of the Rehabilitation Act.

(d) *Complaint Procedures*. 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 herein. 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 (d)(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 following procedures. 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 paragraph (d)(2)(ii) of this section, 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), that is filed after fulfilling the informal exhaustion procedures of § 255.6(d)(1), 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.

(e) *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 below. 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 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 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 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 either to repeal, modify, or amend any other postal regulation, 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.

**Neva Watson,**

*Attorney, Legislative.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[SIP NO. WY-001-0013, FRL-7784-8]

**Approval and Promulgation of Air Quality Implementation Plans; Wyoming; Restructuring and Renumbering of Wyoming Air Quality Standards and Regulations**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving the State Implementation Plan (SIP) revision submitted by the State of Wyoming on September 12, 2003. The revision restructures the Wyoming Air Quality Standards and Regulations (WAQS&R) from a single chapter into thirteen separate chapters and rennumbers the provisions within each chapter. The submitted revision contains no substantive changes to the existing SIP-approved regulations. The intended effect of this action is to make federally enforceable the restructured WAQS&R. This action is being taken under section 110 of the Clean Air Act.

**DATES:** This final rule is effective August 27, 2004.

**ADDRESSES:** EPA has established a docket for this under Docket ID No. WY-001-0013. Some information in the docket may not be publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the docket. You may view the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays. Copies of the Incorporation by Reference material are also available at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency,

Room B-108 (Mail Code 6102T), 1301 Constitution Ave., NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:**

Domenico Mastrangelo, Air & Radiation Program, Mailcode 8P-AR, EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, (303) 312-6436, [mastrangelo.domenico@epa.gov](mailto:mastrangelo.domenico@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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- II. Final Action
- III. Statutory and Executive Order Reviews

**Definitions**

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.
- (iii) The initials *SIP* mean or refer to State Implementation Plan.
- (iv) The words *State* or *Wyoming* mean the State of Wyoming, unless the context indicates otherwise.

**I. Summary of SIP Revision**

On May 10, 2004 (69 FR 25866), EPA published a notice of proposed rulemaking (NPR) for the State of Wyoming. The NPR proposed approval of a State Implementation Plan (SIP) revision restructuring and renumbering the Wyoming Air Quality Standards and Regulations (WAQS&R). The formal SIP revision was submitted by the State of Wyoming on September 12, 2003. The SIP revision restructures the WAQS&R from a single chapter into thirteen separate chapters and rennumbers the provisions within each chapter. The revision contains no substantive changes from the prior codification that is approved into the SIP.

The following table cross references the renumbered and prior numbered SIP chapters and sections. The table identifies the renumbered SIP sections we are approving as replacing the prior numbered SIP sections.

**STATE IMPLEMENTATION PLAN—TABLE OF CORRESPONDING CHAPTERS/SECTIONS**

Title (renumbered SIP section)	Renumbered SIP section	Prior numbered SIP section
Authority .....	Chapter 1, Section 2 .....	Chapter 1, Section 1
Definitions .....	Chapter 1, Section 3 .....	Chapter 1, Section 2
Diluting and concealing emissions .....	Chapter 1, Section 4 .....	Chapter 1, Section 18
Abnormal conditions and equipment malfunction .....	Chapter 1, Section 5 .....	Chapter 1, Section 19
Ambient standards for particulate matter .....	Chapter 2, Sections 2a and 2c only.	Chapter 1, Section 3