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**DEPARTMENT OF STATE**

**22 CFR Part 147[Public Notice: 9390]**

**RIN 1400-AD87**

**Electronic and Information Technology**

**AGENCY:** Department of State.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule implements Section 508 of the Rehabilitation Act (Section 508) for the Department of State. Section 508 requires that Federal departments and agencies shall ensure accessibility by individuals with disabilities who are Federal employees, applicants for employment, or members of the public when developing, procuring, maintaining, or using electronic and information technology.

**DATES:** You may submit comments by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Interested parties may submit comments by one of the following methods:

- *E-mail:* [kottmyeram@state.gov](mailto:kottmyeram@state.gov) with the subject line, “Section 508 proposed rule.”
- *Internet:* At [www.regulations.gov](http://www.regulations.gov), search for this notice by searching for Docket No. DOS-2015-0072 or by the rule’s RIN (1400-AD87).
- *By mail:* Office of the Legal Adviser for Management, ATTN: Section 508 Rule, Room 4325, 2201 C Street NW, Washington DC 20520.

Comments received outside of the comment period may be considered if feasible, but consideration cannot be assured. Those submitting comments to *www.regulations.gov* should not include any personally identifying information or information for which a claim of confidentiality would be asserted; the Department of State will not remove or mask any information from comments that are posted at *www.regulations.gov*. Parties who wish to comment anonymously may do so by submitting their comments via *www.regulations.gov*, leaving the fields that would identify the commenter blank and including no identifying information in the comment itself. Comments submitted via *www.regulations.gov* are immediately available for public inspection.

**FOR FURTHER INFORMATION CONTACT:** Alice Kottmyer, Attorney-Adviser, 202-647-2318, kottmyeram@state.gov (please use the subject line: “Section 508 proposed rule”).

**SUPPLEMENTARY INFORMATION:**

The purpose of this proposed rule is to add 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”). The title of this proposed rule reflects that it applies to Electronic and Information Technology (EIT). Some authorities cited in this rulemaking might use the term “Information and Communications Technology” or “ICT.” For the purposes of this rulemaking, the Department considers “EIT” and “ICT” to be interchangeable.

*Subpart A – General Provisions*

Proposed §§ 147.1 and 147.2 provide that these proposed 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 proposed 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,” “Electronic and Information Technology (EIT),” “Section 508,” “undue burden,” “Section 508 complaint,” “the Secretary,” and otherwise adopts the definitions in 36 CFR 1194.4.

Section 147.4 provides that the Department will ensure that its employees and applicants for employment 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 (22 CFR part 144). The relevant procedures are repeated in this rulemaking, for convenience. Any 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 will be accessible and fillable and will be included for download on the following page: <http://eforms.state.gov/searchform.aspx>. Prior to approval by the Office of Information

and Regulatory Affairs, a static version of the form (in PDF format) will be available upon request; see the “FOR FURTHER INFORMATION” section above. The Department’s analysis and notice pursuant to the Paperwork Reduction Act is included in the “Regulatory Analysis,” below. This form will be used for complaints not only under Section 508, but under other statutes as well. 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 from the Department of the notice. 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 believes that this provision is helpful to clarify when there is exhaustion of administrative remedies under the Administrative Procedure Act for purposes of a complaint under

Section 508. The Department is reviewing the possibility of adding a parallel provision to 22 CFR part 144 in the near future.

## **Regulatory Analysis**

### *Administrative Procedure Act*

The Department of State is publishing this rulemaking as a proposed rule, with 60-day provision for public comment.

### *Small Business Regulatory Enforcement Fairness Act of 1996*

This proposed 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 proposed 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 the rule to OMB for its review. The Department has also reviewed the proposed rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866, and finds that the benefits of the proposed 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 proposed 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 proposed 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 proposed 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 proposed 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. As part of this rulemaking, the Department is seeking comment on the administrative burden associated with this collection of information. The Department has submitted an information collection request to OMB for review and approval 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.

(1) *Type of Information Collection:* New collection

(2) *Title of the Form/Collection:* Discrimination Complaint Form, OMB Control No. 1405-0220

(3) *Agency form number:* DS-4282

(4) *Affected public:* 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).

(5) *Change to information collected by the Department of State:* This is a new information collection.

(6) *An estimate of the total number of respondents:* The Department estimates a total of 10 respondents per year.

(7) *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.

(8) *Submit comments to both OMB and the Department of State by the following methods:*

***Office of Management and Budget (OMB):***

- Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:
- *E-mail:* oira\_submission@omb.eop.gov. You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202-395-5806. Attention: Desk Officer for Department of State.

***Department of State:***

**Date(s):** The Department will accept comments from the public up to *[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]*

- *Web:* Persons with access to the Internet may view this notice and provide comments by going to the regulations.gov web site at: <http://www.regulations.gov/index.cfm>. Search for Docket No. DOS-2015-0072 or for RIN number 1400-AD87.

- You must include the DS form number (DS-4282) or information collection title in any correspondence. Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.
- *E-mail:* kottmyeram@state.gov. You must include the DS form number (DS-4282), information collection title, and the OMB control number in any correspondence.

(9) *The Department seeks public comment on:*

- whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- the accuracy of the Department's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- the quality, utility, and clarity of the information to be collected; and
- how to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*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 <http://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 proposed to be added to subchapter O to read as follows:

**PART 147 – ELECTRONIC AND INFORMATION TECHNOLOGY**

**Subpart A – General Provisions**

Sec.

- 147.1 Purpose.
- 147.2 Application.
- 147.3 Definitions.
- 147.4 Notice.
- 147.5 Discrimination prohibited.
- 147.6 Electronic and information technology requirements.

**Subpart B – Complaint Procedures**

- 147.7 Filing a Section 508 complaint.
- 147.8 Final agency action.

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, which requires that when Federal departments and agencies develop, procure, maintain, or use electronic and information technology, they shall ensure accessibility by 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 § 147.3(b) and 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.

*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 electronic and information technology includes, but is not limited to, telecommunications products (such as telephones), information kiosks and transaction machines, web sites, multimedia, and

office equipment such as copiers and fax machines. 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. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology. As used herein, the Department intends that EIT mean the same as the term “information and communications technology” or “ICT.”

*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.

*Undue burden* has the same meaning as that contained in 36 CFR 1194.4.

#### **§ 147.4 Notice.**

(1) The Secretary shall ensure that employees and applicants for employment 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.

(2) 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 Standards and Guidelines when it develops, procures, maintains, or uses EIT. EIT must permit access to and use of information and data that is comparable to the access to and use of information and data by federal employees and members of the public without disabilities. The Department must also ensure that 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 that provided to 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 (*See* 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 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: <http://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.

(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 agency of the letter 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. Failure to do so may result in having the complaint closed prior to arriving at a decision on the merits of the complaint.

(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(s) 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: December 17, 2015.

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

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