DEPARTMENT OF AGRICULTURE
Office of the Secretary

NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE
PROPOSED RULES

the president issued Executive Order 11914, under which the Department of
Health, Education, and Welfare is re-
quard to coordinated government-wide
enforcement of section 504. As lead
agency, HEW published its final regu-
lations implementing section 504 on
May 4, 1977. See 45 CFR Part 84. In
accordance with Executive Order
11914, HEW issued on January 13,
1978, final standards, procedures, and
guidelines to be followed by each Fed-
eral agency in issuing section 504 regu-
lations. See 45 CFR Part 85.

The rules proposed by this Depart-
ment are intended to be consistent
with the HEW standards and guide-
lines. Because the Department has
many common recipients of Federal fi-
nancial assistance with HEW, the pro-
posed rules incorporate most of the
HEW section 504 regulations.

The differences between the HEW
regulations and the proposed rules are
minor. The definition for “Secretary”
and “Department” have been changed
to reflect the Department of Agricul-
ture. Throughout the rules, “Secret-
tary” has been substituted for “Direc-
tor”.

The definition of “section 504”
§15b.3(c), the definition of “handi-
capped person,” §15b.3(k), and the
sections on discrimination prohibited,
§15b.4(b)(3), §15b.4(d), and §15b.4(e)
reflect wording found in the more
recent HEW guidelines. See 45 CFR
Part 85.

Section 15b.8(C)(2) requires all re-
cipients to keep records of their self-
evaluation. The HEW regulations,
on the other hand, require only recipients
with 15 or more employees to keep
such records. Since all recipients are
required to complete a self-evaluation,
we believe that all recipients should be
required to maintain such records.

Consistent with the HEW guidelines,
§15b.8 imposes a notification require-
ment on all recipients, §15b.10 re-
quards coordination of sections 502 and
503 of the Act and §15b.11 requires
interagency cooperation.

Except to the extent noted above,
these regulations follow the language
in HEW’s regulations at 45 CFR Part
85.

A draft impact analysis which ad-
dresses regulatory options for imple-
menting Section 504 of the Rehabilita-
tion Act of 1973 is available upon re-
quest.

Copies of the regulations are also
available on tape or in braille and will
be provided upon request.

In consideration of the above, it is
proposed that Part 15b be added to
Title 7 of the Code of Federal Regula-
tions to read as set forth below.


Bob Bergland
Secretary.

PART 15—NONDISCRIMINATION ON THE
BASIS OF HANDICAP IN PROGRAMS AND
ACTIVITIES RECEIVING OR BENEFITING
FROM FEDERAL FINANCIAL ASSISTANCE

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15.40 Procedures.

Subpart A—General Provisions

§ 15.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 15.2 Application.

This part applies to each recipient of Federal financial assistance from the Department of Agriculture and to each program or activity that receives benefits or services from such assistance.

§ 15.3 Definitions.

As used in this part, the term:

(a) "Executive Order" means Executive Order 11914, titled "Nondiscrimination with Respect to the Handicapped in Federally Assisted Programs," issued on April 48, 1976.


(e) "Department" means the Department of Agriculture and includes each of its operating agencies and other organizational units.

(f) "Secretary" means the Secretary of Agriculture or any officer or employee of the Department to whom the Secretary has heretofore delegated, or to whom the Secretary may hereafter delegate, the authority to act under the regulations in this part.

(g) "Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to whom Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or other person or entity to whom Federal financial assistance is extended directly or through another beneficiary, including the ultimate beneficiary of the assistance.

(h) "Applicant for assistance" means one who submits an application, request, or plan required to be so approved by a Department official or by a recipient as a condition of becoming a recipient.

(i) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), cooperative agreement, or any other arrangement by which the Department provides or otherwise makes available assistance in the form of (i) funds; (ii) services of Federal personnel; or (iii) real and personal property or any interest in or use of such property, including (I) transfers or leases of such property for less than fair market value or for reduced consideration; and (ii) proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(j) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(k) "Handicapped Person." (1) "Handicapped Person" means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (k)(1) of this section, the phrase (i) "physical or mental impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairment; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; mental retardation; emotional illness; and drug addiction and alcoholism.

(II) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(iii) "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.

(iv) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairments, or (C) has none of the impairments described in paragraph (k)(2)(i) of this section but is treated by a recipient as having such an impairment.

(l) "Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public school, elementary, secondary, or adult educational services, a handicapped person, (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under State law to provide such services to handicapped persons, or (iii) to whom a State is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standard requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the recipient of such services.

(m) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (k) of this section.

§ 15.4 Discrimination prohibited.

(a) General. No qualified handicapped person 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 which receives or benefits from Federal financial assistance.

(b) Discriminatory actions prohibited.

(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provides a qualified handicapped person, with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain

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the same result, to gain the same benefit, or reach the same level of achievement as that provided to others;  

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped person unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;  

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;  

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or  

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.  

(3) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that most integrated setting appropriate to the person's needs.  

(3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.  

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria, standards, or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.  

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.  

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.  

(c) Programs limited by Federal law.  

(1) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.  

(2) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.  

(3) Recipients shall take appropriate steps to ensure communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.  

§ 155.5 Assurance required.  

(a) Assurances. An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the 'Secretary,' that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.  

(b) Duration of obligation. (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.  

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.  

(3) In all other cases, the assurance will obligate the recipient for the period during which Federal financial assistance is extended.  

§ 155.6 Remedial action, voluntary action, and self-evaluation.  

(a) Remedial action. (1) If the Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 of this part, the recipient shall take such remedial action as the Secretary deems necessary to overcome the effects of the discrimination.  

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 of this part and where another recipient exercises control over the recipient that has discriminated, the Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as the Secretary deems appropriate, agree to forebear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.  

(2) Remedial action required of recipients of Federal financial assistance. (1) If the Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 of this part, the recipient shall take such remedial action as the Secretary deems necessary to overcome the effects of the discrimination.  

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 of this part and where another recipient exercises control over the recipient that has discriminated, the Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as the Secretary deems appropriate, agree to forebear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.  

(2) Remedial action required of recipients of Federal financial assistance. (1) If the Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 of this part, the recipient shall take such remedial action as the Secretary deems necessary to overcome the effects of the discrimination.  

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 of this part and where another recipient exercises control over the recipient that has discriminated, the Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as the Secretary deems appropriate, agree to forebear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.  

(2) Remedial action required of recipients of Federal financial assistance. (1) If the Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 of this part, the recipient shall take such remedial action as the Secretary deems necessary to overcome the effects of the discrimination.  

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 of this part and where another recipient exercises control over the recipient that has discriminated, the Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as the Secretary deems appropriate, agree to forebear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.
the program when such discrimination occurred or (ii) with respect to handicapped persons, would have been participants in the program had the discrimination not occurred.

(b) Voluntary action. A recipient may adopt a voluntary action, that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity, by qualified handicapped persons.

(c) Self-evaluation. (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped or organizations representing handicapped persons, its current policies and practices and the effects thereof; that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Secretary upon request: (i) A list of the interested persons consulted, (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.

§15b.7 Designation of responsible employee and adoption of grievance procedures.

(a) Designation of responsible employee. A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) Adoption of grievance procedures. A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complainants from applicants for employment or from applicants for admission to post-secondary educational institutions.

§15b.8 Notice.

(a) A recipient shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 of this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to §15b.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include but are not limited to the posting of notices, publication in newspapers and magazines, placement of notices in recipients' offices, distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publication containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in these materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of the paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

§15b.9 Administrative requirements for small recipients.

The Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with §15b.7, in whole or in part, when the Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

§15b.10 Coordination with sections 502 and 503.

(a) Agencies and other organizational units within the Department shall consult with Architectural and Transportation Barriers Compliance Board in developing requirements for the accessibility of new facilities and alterations, as required in §15b.19, and in enforcing such requirements with respect to facilities that are subject to section 502 of the Rehabilitation Act of 1973, as amended, as well as section 504.

(b) Agencies and other organizational units within the Department shall consult and coordinate with the Department of Labor in enforcing requirements concerning employment discrimination with respect to recipients that are also Federal contractors subject to section 503 of the Rehabilitation Act of 1973, as amended.

§15b.11 Intercyber cooperation.

(a) Where each of a substantial number of recipients is receiving assistance for similar or related purposes from two or more agencies or where two or more agencies cooperate in administering assistance for a given class of recipients, the agencies shall (1) coordinate compliance with section 504 and (2) designate one of the agencies as the primary agency for section 504 compliance purposes.

(b) Any agency conducting a compliance review or investigating a complaint of an alleged section 504 violation shall notify any other affected agency upon discovery of its jurisdiction and shall inform it of the findings made. Reviews or investigations may be made on a joint basis.

§15b.12 Effect of State or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any State or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

Subpart B—Employment Provisions

§15b.13 Discrimination prohibited.

(a) General.

(1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity receiving Federal financial assistance.

(2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs assisted under that Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and shall not limit, segregate, or classify applicants or employees in any way that ad-
versely affects their opportunities or status because of handicap.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. This includes relationships with employment and referral agencies, with labor unions, with organizational providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) Specific activities. The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right to return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leave of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 15b.14 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include: (1) Making facilities used by employees readily accessible to and usable by handicapped persons, and

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 15b.15 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:

(1) The test score or other selection criterion, as used by the recipient, is shown to bear a relationship to the position in question, and (2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Secretary to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory or speaking skills (except where those skills are the factors that the test purports to measure).

§ 15b.16 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section. A recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to person job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 15b.6(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federal assisted program or activity pursuant to § 15b.6(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped Provided, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty. Provided, That: (1) All entering employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodation;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

Subpart C—Program Accessibility

§ 15b.17 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, or be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 15b.18 Existing facilities.

(a) Program accessibility. A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety is readily accessible to and usable by handicapped per-
sions. This paragraph does not necessar-ily require a recipient to construct or maintain each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons.

(b) Methods. A recipient may comply with the requirements of paragraph (a) of this section through means such as redesign of equipment, reassignment of classes or other service to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirement of § 15b.19, or any other methods that result in making its program or activity accessible to and usable by handicapped persons. A recipi-ent is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the require-ments of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) Small health, welfare, or other social service providers. If a recipient with fewer than fifteen employees that provides health, welfare, or other social services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are ac-cessible.

(d) Time period. A recipient shall comply with the requirement of para-graph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(e) Transition plan. In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipi-ent 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 plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing hand-capped persons. 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 recipient’s facilities that limit the ac-
cessibility of its program or activity to handicapped persons;

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

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility 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 tran-sition period; and

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

(f) Notice. The recipient shall adopt and implement procedures to ensure that interested persons, including per-sons with impaired vision or hearing, can obtain information as to the exist-ence and location of services, activi-ties, and facilities that are accessible to and usable by handicapped persons.

§ 15b.19 New construction.

(a) Design and construction. Each facility or part of a facility con-structed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construc-tion was commenced after the effective date of this part.

(b) Alteration. Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) American National Standards Institute accessibility standards. Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Accessible Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A117.11981)(R1971),1 which is incorporated by reference in this part, shall consti-tute compliance with paragraphs (a) and (b) of this section. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is there-by provided.

§ 15b.20 Application of this subpart.

This subpart applies to preschool, elementary, secondary, and adult edu-

1Copies obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

§ 15b.21 Location and notification.

A recipient that operates a public elementary or secondary education program shall annually:

(a) Undertake to identify and locate every qualified handicapped person re-siding in the recipient’s jurisdiction who is not receiving a public educa-tion; and

(b) Take appropriate steps to notify handicapped persons and their par-ents or guardians of the recipient’s duty under this subpart.

§ 15b.22 Free appropriate public education.

(a) General. A recipient that operates a public elementary or secondary education program shall provide free appropriate public education to each qualified handicapped person who is in the recipient’s jurisdiction, regard-less of the nature or severity of the person’s handicap.

(b) Appropriate education. (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special educa-tion and related aids and services that:

(i) Are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met; and

(ii) Are based upon adherence to procedures that satisfy the requirements of § 15b.23, § 15b.24, and § 15b.25.

(2) Implementation of an individualized education program developed in accordance with the Education of the Handicapped Act is one means of meeting the requirements of paragraph (b)(1) of this section.

(3) A recipient may place a handicapped person in or refer such person to a program other than the one that it operates as its means of carrying out the requirement of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to such handicapped person so placed or re-

(c) Free education—(1) General. For the purpose of this section, the provi-sion of a free education is the provi-sion of educational and related serv-ices without cost to handicapped persons or their parents or guardians, except for those fees that are imposed on nonhandicapped persons or their parents or guardians. It may consist of either of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the re-
requirements of this subpart, or payment of the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) Transportation. If a recipient places handicapped persons in or refers such persons to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the persons or their parents or guardians if the persons were placed in the program operated by the recipient.

(3) Residential placement. If placement in a public or private residential program is necessary to provide a free appropriate public education to handicapped persons because of their handicap, the program, including nonmedical care and room and board, shall be provided at no cost to the persons or their parents or guardians.

(4) Placement of handicapped persons by parents. If a recipient has made available in conformance with the requirements of this section and §15a.24, a free appropriate public education to a handicapped person and the person's parents or guardian chooses to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or otherwise regarding the question of financial responsibility are subject to the due process procedures of §15a.25.

(4)1 Placement of handicapped person by self. A recipient may not exclude any qualified handicapped person from a public elementary or secondary education program after the effective date of this part.

§15b.23 Educational setting.

(a) Academic setting. A recipient to which this subpart applies shall educate, or shall provide for the education of each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) Nonacademic setting. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in §15b.22(a)(2), a recipient shall ensure that handicapped persons participate in nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) Comparable facilities. If a recipient, in compliance with paragraph (a) of this section, operates a facility that is comparable to the services, and activities of the recipient.

§15b.24 Evaluation and placement.

(a) Placement evaluation. A recipient that operates a public elementary or secondary education program shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section and §15b.28(c) of this part to determine whether the education of the person in the regular school is not appropriate to the needs of the handicapped person, or if it is believed to need special education or related services for the purposes of §15b.24(b) of this part.

(b) Evaluation procedures. A recipient to which this subpart applies shall establish standards and procedures for the evaluations and placement of persons who, because of handicap, need or are believed to need special education or related services that ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(6) Placement procedures. In interpreting evaluation data and in making placement decisions, a recipient shall:

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, to establish procedures to ensure that information obtained from all such sources is documented and carefully considered,

(3) Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and ensure that the placement decision is made in conformity with §15b.23.

(4) Reclassification. A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

§15b.25 Procedural safeguards.

A recipient that operates a public elementary or secondary education program shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special education or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

§15b.26 Nonacademic services.

(a) General. (1) A recipient to which this subpart applies shall provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational activities, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipient, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employ-
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§ 15b.24 Application of this part.

This part applies to postsecondary education programs and activities, including postsecondary vocational education programs and activities, that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§ 15b.30 Admissions and recruitment.

(a) General. Qualified handicapped persons may not be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this part applies.

(b) Admissions. In administering its admission policies, a recipient to which this part applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect upon handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Secretary to be available;

(3) Shall assure itself that (i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level and not whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person, but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) Preadmission inquiry exception.

When a recipient is taking remedial action to correct the effects of past discrimination pursuant to §15b.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to §15b.6(b), the recipient may invite applicants for admissions to indicate whether and to what extent they are handicapped; Provided, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) Validity studies. For the purpose of paragraph (c)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

§ 15b.31 Treatment of students; general.

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health, insurance, counseling, financial aid, physical education, athletic programs or within, transportation, other extracurricular, or other postsecondary education program or activity to which this part applies.

(b) A recipient to which this part applies that considers participation by students in education program or activities not operated wholly by the recipient as part of, or equivalent to, an education program or activity conducted by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this part applies may not, on the basis of handicap, exclude any qualified handicap...
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capped student from any course of study, or other part of its education program or activity;
(d) A recipient to which this subpart applies shall operate its programs and activities in the most integrated setting appropriate.

§ 159.32 Academic adjustments.
(a) Academic requirements. A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include, in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.
(b) Other rules. A recipient to which this subpart applies may not impose upon handicapped students any rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.
(c) Course examinations. In its examinations or other procedures for evaluating students' academic achievement in its program, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represent the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).
(d) Auxiliary aids. (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient in the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.
(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments; readers in libraries for students with visual impairments; classroom equipment adapted by use by students with manual impairments, and other similar services and aids. Recipients need not provide auxiliary aids if they are not reasonably necessary for the handicapped student's education.

§ 159.33 Housing.
(a) Housing provided by the recipient. A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period, provided for in Subpart C of this part, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodation is, as a whole, comparable to that of nonhandicapped students.
(b) Other housing. A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself, that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

§ 159.34 Financial and employment assistance to students.
(a) Provision of financial assistance.
(1) In providing financial assistance of qualified handicapped persons, a recipient to which this subpart applies may not (i) on the basis of handicap, provide less assistance than is provided to nonhandicapped persons; limit eligibility for assistance, or otherwise discriminate or (ii) assist any entity or person that provides assistance in a manner that discriminates against qualified handicapped persons on the basis of handicap.

§ 159.35 Nonacademic services.
(a) Physical education and athletics.
(1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(b) Counseling and placement services. A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap.

Subpart F—Health, Welfare, Social and Other Services

§ 159.36 Application of this subpart.
This Subpart F applies to health, welfare, social and other programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of such programs or activities.

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(a) General. In providing health, welfare, social and other services or benefits, a recipient may not, on the basis of handicap:

1. Deny a qualified handicapped person these benefits or services;
2. Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that afforded nonhandicapped persons;
3. Provide a qualified handicapped person with benefits or services that are not as effective (as defined in § 15b.4(b)) as the benefits or services provided to others;
4. Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or
5. Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) Notice. A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) Emergency treatment for the hearing impaired. A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(d) Auxiliary aids. (1) A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(2) The Secretary may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(3) For the purpose of this paragraph, auxiliary aids may include braille and taped material, interpreters, and other aids for persons with impaired hearing or vision.

§ 15b.38 Drug and alcohol addicts.

A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a medical condition, because of the person's drug or alcohol abuse or alcoholism.

§ 15b.39 Education of institutionalized persons.

A recipient to which this subpart applies and that operates or supervises a program or activity for persons who are institutionalized because of handicap shall ensure that each qualified handicapped person, as defined in § 15b.3(2)(ii), in its program, or activity is provided an appropriate education, as defined in § 15b.22(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under Subpart D of this part.

Subpart C—Procedures

§ 15b.40 Procedures.

The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in 7 CFR 15.5—15.11 and 7 CFR 15.60 et seq.

(F.R. Dec. 70-2156 Piled 1-19-76; 8:45 a.m.)