Rules and Regulations

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DEPARTMENT OF AGRICULTURE
Office of the Secretary
7 CFR Part 15a

Education Programs or Activities Receiving or Benefiting From Federal Financial Assistance;
Nondiscrimination on the Basis of Sex

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: The Department of Agriculture issues these regulations implementing Title IX of the Education Amendments of 1972, as amended, which prohibits (with certain exceptions) sex discrimination in federally-assisted education programs and activities.

EFFECTIVE DATE: These regulations are effective on April 11, 1979.


SUPPLEMENTARY INFORMATION: On May 10, 1978, this Department issued proposed rules to implement Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et seq. Approximately 25 comments were submitted by various government entities, universities, educational organizations, and individuals. All of the comments have been considered and will be discussed below. Some of the comments have produced changes. In our discussion, we will explain why we are accepting or rejecting a recommended change.

In issuing these regulations, we have two overriding concerns: (1) To effectuate the purpose of Title IX by prohibiting sex discrimination in federally-assisted education programs and activities and (2) To avoid unnecessary burdens on the public that can result from inconsistent or duplicative requirements from the regulations of more than one Department or agency.

As a result of the first concern, the general rule against sex discrimination is being applied as broadly as possible. The exceptions to the rule are being applied narrowly. As a result of the second concern, these rules are intended to be consistent with the Title IX rules issued by the Department of Health, Education, and Welfare (HEW), which has many recipients in common with this Department.

Our discussion is divided into three groups. The first group contains our responses to general comments. The second group involves comments addressed to specific sections. The third group contains separate responses to the many comments and questions from various State Cooperative Extension Services.

I. General Comments

A. One comment recommended that USDA withdraw its Title IX regulations and simply announce that USDA will defer to HEW regarding the enforcement of Title IX. When the proposed regulations were being drafted, consideration was given to simply incorporating HEW’s regulations into USDA’s by reference. It was decided, however, that incorporation by reference would be confusing because affected parties (recipients, beneficiaries, and government officials) would be required to make continued reference to two documents to determine the extent of their differences. Looking to a single document should be easier. Furthermore, USDA is not able to simply defer to HEW enforcement since all USDA-funded, education activities are not covered by HEW’s regulations. However, it should be noted that USDA is willing to enter into an agreement with HEW concerning compliance reviews of our common recipients. (Several comments strongly recommended the need for inter-agency cooperation.)

B. It was recommended that USDA extend the deadline for public comment and send the proposed rules to the Title IX coordinator at each school for comment. Since these regulations are almost identical to HEW’s and since presumably theFormal educational community was able to participate fully in responding to those regulations, we see no compelling reason to single that community out for special commenting opportunities. Furthermore, since final regulations can be amended, comments may be sent to appropriate officials who will consider any recommended changes.

C. Several comments suggested that we provide a list of Department programs which are covered by Title IX. The appendix to these rules contains a list of covered programs. It should be noted that if a particular recipient under one of these programs is not an “educational recipient” or if a significant purpose of the assistance is not education, then the recipient will not be covered. See § 15a.2(q).

D. Several comments stated that the Department should commit sufficient resources and personnel for a successful enforcement program; that we should develop technical assistance and training materials for recipients and beneficiaries; and that we should provide training on sex bias to all Department education program staff. It is our intention to implement these suggestions to the extent feasible.

E. It was recommended that the words “or sexual preference” be inserted in each instance after the word “sex.” Since the Title IX statute deals only with sex discrimination, we have no authority to expand the categories of prohibited discrimination in these Title IX regulations.

F. Several comments strongly suggested that recipients be required to collect sex-based data. Section 15a.21 incorporates by reference 7 CFR 15.5 which requires agencies within USDA to make compliance reviews. Recipients will be required to submit compliance reports which should include sex-based data.

II. Comments and Changes Regarding Specific Sections

A. Section 15a.2. One comment noted that there was no definition of “education program or activity.” Although the proposed rules contained
no such definition (the HEW rules do not), we now believe that a definition is necessary for establishing the scope of the application of these rules.

An “education program or activity” is one having education as a significant purpose. While education need not be the sole purpose of the program or activity, it must be more than an incidental effect of a program in order to be covered by these regulations. In this regard, we note that some recipients have education as a significant reason for their existence. Under our definition any financial assistance to such a recipient, regardless of the purpose of the assistance, will be deemed assistance to an “education program or activity.” Other recipients may have little or no educational purposes. In those situations, assistance to them will be deemed an “education program or activity” only if a significant purpose of the assistance is education.

In connection with our definition of “education program or activity,” we are adding a new term, “educational recipient,” which includes an educational institution as defined in § 15a.2(g) and every other recipient which has education as a significant purpose. This broader term includes not only the formal education community, but also informal educational programs (Cooperative State Extension Service, Youth Conservation Corps) and other educational organizations and associations that receive Federal assistance.

We note that no definition is being provided for the term “education.” We will rely on accepted community attitudes, common sense, dictionary definitions, and whether and to what extent a recipient claims or has claimed to have educational purposes.

We are adding a definition for the term “United States.” The definition is the same as in our regulations under Title VI of the Civil Rights Act of 1964. See 7 CFR 15.2(i).

Thus, we are adding the following new paragraphs:

§ 15a.2.

(p) “Educational recipient” means an educational institution as defined in § 15a.2(g) and every other recipient which has education as a significant purpose.

(q) “Education program or activity” means:

(1) Every program or activity operated by an educational recipient; and

(2) Every program or activity operated by any other recipient where a significant purpose of the financial assistance is education.

(r) “United States” means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term “State” means any one of the foregoing.

B. Section 15a.3. Several comments have questioned how the Department will know whether the self-evaluation requirement (§ 15a.3(c)) has been complied with by recipients. Some comments recommended the imposition of periodic reporting and prior approval of the funding or refunding of any recipient.

Under § 15a.71, which incorporates 7 CFR 15.5, agencies within the Department are expected to review the activities of recipients to determine compliance. Recipients will be required to keep records and to submit compliance reports. The Department should know whether a recipient is meeting the self-evaluation requirement and other requirements—e.g., §§ 15a.4(a), 15a.7(a) and (b), and 15a.8(a) and (b)—through periodic agency reviews or through complaint-generated reviews.

As to the suggestion that the Department require approval of the recipient’s self-evaluation prior to any funding, we have two objections. First, the inconsistency with HEW’s regulations would cause confusion and be burdensome on those recipients dealing with both Departments. Second, a prior approval requirement would cause lengthy interruptions in ongoing programs. As a practical matter, some programs could be delayed for an extended period of time while recipients conduct self-evaluations and the agencies review them. Such action by the Department would be tantamount to a grant termination or a refusal to continue assistance which Title IX permits only after certain procedures have been completed. 20 U.S.C. 1682.

As proposed, § 15a.3(c) requires only “recipient education institution(s)” to make a self-evaluation. The term “educational institution” covers generally what is regarded as the formal education community, not all education programs or activities receiving financial assistance. Since all recipients must comply with Title IX and since compliance requires self-analysis, we are amending § 15a.3(c) by deleting the words “education institution.”

After completion of the self-evaluation, descriptions of any modifications or remedial steps must be maintained for three years. Section 15a.3(d). In view of the added paragraph, § 15a.3(d), discussed infra, we are amending § 15a.3(d) to read as follows:

“Recipient shall maintain on file for at least three years following the effective date of this Part or completion of the evaluation required under paragraph (c) of this section, whichever is longer, and shall provide to the Secretary upon request a description of any modifications made pursuant to subparagraph (c)(ii) and of any remedial steps taken pursuant to sub-paragraph (c)(iii).” (The amended portion is italicized.)

Those recipients, who have grants from both HEW and USDA and who have already completed their self-evaluation under HEW’s regulations, will not have to begin a new evaluation process to satisfy USDA requirements. § 15a.5(d). However, those recipients are required to maintain the required information for three years from the effective date of this part. The Department will need the information for compliance reviews, and it is unlikely that all recipients can be reviewed in less than three years. Some recipients will therefore have to maintain records longer for USDA than they would for HEW. This requirement is necessary for this Department to perform its review responsibilities.

C. Section 15a.4. A question has been raised as to the applicability of the assurance requirement to existing programs. The assurance requirement of § 15a.4 applies to new applications or reapplications for funding. The giving of an assurance is a condition of granting the funds. However, even existing programs, which have been funded since the enactment of Title IX, are covered by the general statutory prohibition against sex discrimination. If statutory violations have occurred prior to the effective date of these regulations, appropriate action will be taken in accordance with 20 U.S.C. 1682. In determining whether a preregulation violation has occurred, the substantive rules in these regulations will serve as guidelines.

D. Section 15a.5. Several comments pointed out that our Title IX regulations will result in duplication of those requirements already performed as part of compliance with HEW’s regulations. See §§ 15a.3(c), 15a.4(a), 15a.7(a) and (b), and 15a.8(a) and (b). Since the requirements are intended to apply only where not otherwise covered by HEW regulations, we are adding a clarifying paragraph. It should be noted, however, that those requirements must have been applied to any of the programs which this Department funds. If not, they must be met as to our programs. Therefore, we are adding the following paragraph:

§ 15a.5(d). Effect of Compliance with HEW Regulations. If a recipient is covered by the Title IX regulations issued by HEW, 45 CFR Part 66, and has already complied with the

HEW requirements corresponding to §§ 15a.3(c), 15a.4(a), 15a.7(a) and (b), and 15a.8(a) and (b), then the requirements of those sections need not be duplicated in order to comply with this Part. However, if the requirements have not been applied to all programs funded by this Department, then the requirements will have to be met as to those programs."

E. Section 15a.7. One comment concerned the adequacy of a recipient’s complaint system. The implication of the comment was that USDA should require a specific set of complaint procedures by all recipients. We see no particular need for uniformity in this area. Most recipients, particularly large institutions, have existing complaint systems which can be modified to incorporate complaints of sex discrimination. If the recipient’s procedures provide for a prompt, fair resolution of complaints, then the system is adequate.

F. Section 15a.8. One suggestion was that public notices of applicability of Title IX be prominently displayed and be of a specified size so as to attract the reader’s attention. It has also been recommended that recipients be required to give advance public notice of their events. We believe that the need for consistency with HEW’s regulations overrides the need for imposing these requirements on recipients. If every Department issuing Title IX regulations specifies this level of detail, recipients will be in constant quandary about which requirements have to be met for compliance with such regulations. We add, however, that deception and bad faith may be evidenced by the lack of prominent display and that the failure to give adequate public notice of events may indicate an intent to discriminate. These matters will be determined in compliance review on a case-by-case basis.

G. Sections 15a.51–15a.61 (Subpart E). It has been pointed out that three district courts have held that Subpart E (covering employment practices of recipients) is inconsistent with Title IX and therefore invalid. Brunswick School Board v. Califano, 17 FEP 476 (D. Maine 1978); Seattle University v. HEW, 16 FEP 719 (W.D. Wash. 1978); Romeo Community Schools v. HEW, 14 FEP 1177 (E.D. Mich. 1977). It was therefore recommended that we suspend action on Subpart E pending resolution by the Courts. Until there is a final judicial resolution or until the Justice Department and HEW accept as final his cited decisions, we are not suspending action on Subpart E. Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., which expressly does not cover the employment practices of recipients of federal assistance, the courts have held that employment practices could be challenged where there is a sufficient nexus between a recipient’s employment practices and the delivery of services to intended beneficiaries. Lee v. Macon County Board of Education, 267 F. Supp. 458, 472 (M.D. Ala. 1967), aff’d sub nom, Wallace v. U.S., 389 U.S. 215 (1967); U.S. v. Jefferson County Board of Education, 372 F. 2d 836, 843–45, 693 (5th Cir. 1966), aff’d en banc, 380 F. 2d 355, cert. denied, 389 U.S. 840 (1967); Board of Education of Taylor County v. Finch, 414 F. 2d 1068, 1078 (5th Cir. 1969); Morabito v. Alabama Mental Health Board, 287 F. Supp. 291, 297 (M.D. Ala. 1969). In our opinion, there is no area where there is a greater connection between employment practices and delivery of services than in the area of education. Where students are to be learning and developing their interests and abilities without regard to their sex and where this development is influenced greatly by the example of teachers, administrators, and other personnel, discriminatory employment practices cannot help but have an adverse impact on educational and career benefits intended for the students. Furthermore, even if it is assumed that HEW’s regulations are too broad and eventually have to be redrafted, we still have a responsibility to maintain uniformity by following HEW’s present policy position.

H. Clerical errors in §§ 15a.5(a), 15a.31(b), 15a.34(b), 15a.37(a) and 15a.53(a) have been corrected.

III. Comments and questions from the Cooperative Extension Service (CES) of various States

A. A major concern was that the regulations as drafted are not "tailored" to fit clientele groups served by CES. Those comments recommended that terminology other than "student" or "admission" be used in order to make clear how the rules applied to CES.

When drafting the proposed rules, we considered using different terminology. However, it is virtually impossible to find terms which are perfectly suitable for each USDA-funded recipient. Because we fund a variety of recipients, including schools and universities as well as the CES, and because of the need for uniformity, we decided to adopt HEW’s term, “student,” which includes every intended beneficiary of an education program or activity.

As noted in the Supplementary Information with our proposed rules, 40 FR 20012, it is intended that informal education programs, such as 4-H and other CES activities, be covered. The simplest way to achieve this is to define broadly the terms, “student” and “admission” to include “participants.” This latter term is clearly sufficient to cover CES clientele.

A similar comment stated that the term “admissions policy” is confusing since CES does not have an admissions policy as do institutions of higher education. Actually the term is not used, although “policy or criterion for admission” is used in § 15a.21(b)(1). In our view, this latter term denotes any criterion or requirement for participating in or receiving the benefits of CES programs and activities. Certainly, the 4-H Clubs have criteria (e.g., age limits) for participating in its activities. The Title IX regulations simply prohibit using sex as a factor in determining who or how one can participate in CES programs.

B. One comment recommended that 4-H programs be exempted from the Title IX regulations, because the elimination of boy and girl divisions will cause the participation in some programs to dwindle. Congress, in enacting Title IX, provided certain statutory exemptions, none of which apply generally to 4-H. This Department has no authority to create additional exemptions. Moreover, even if we had such authority, we would not exempt 4-H because, as a matter of policy, this Department is opposed to sex discrimination. Concerning the anticipated loss of participation, it may be recalled that similar arguments were made in the 1960’s regarding the racial integration of 4-H programs. For similar reasons the argument is rejected today. The fact that some members may be opposed to participating in a program that allows members of the other sex to participate is not sufficient reason for excluding or segregating the latter group.

C. What guidelines are to be established for 4-H and Youth and Homemakers Clubs that currently have membership of all one sex? Guidelines are contained in these regulations. First, the situation must be examined closely to determine the cause. See §§ 15a.3(c), 15a.30(c). We do not say categorically that the existence of a club with members of only one sex is violative of Title IX. Such clubs may be the result of individual choice, although statistically it is improbable. It is more likely that there are or have been policies and practices which are prohibited by Title IX. There could be intentional exclusion of one sex, §§ 15a.21, 15a.34; disparate outreach practices, §15a.23; discriminatory counseling, §15a.30; or employment discrimination, §15a.51. Second, any discriminatory practices
must be modified. Section 15a.3(c)(ii).

Third, remedial steps must be taken to correct the effects of the prior practices. Section 15a.3(c)(ii). Remedial action could include special outreach and counseling efforts, program changes, or club mergers.

D. Are there to be specific steps for bringing males into Homemaker Clubs? See the self-evaluation provisions, § 15a.3(c), and the discussion in C above.

E. What guidelines are being considered for the 4-H camping program? See the provisions regarding admissions, §§ 15a.21, 15a.34; housing, § 15a.32; and other facilities, § 15a.33. These sections offer substantial guidance.

F. Where are complaints to be filed? Each recipient must have or establish an informal complaint procedure. Section 15a.7(b). Furthermore, complaints may be filed with this Department. Section 15a.71, incorporating by reference 7 CFR 15.6.

G. What guidelines are being developed to insure the use of program materials that avoid sex role stereotyping? This Department will assist in every way possible. However, the review of program materials is largely a recipient's responsibility. See §§ 15a.3(c), 15a.42. To the extent that your materials are prepared by the Federal Extension Program, there is an on-going process for reviewing those materials for sex bias. As to the materials prepared for CES, we suggest that you consult any interested community organization and/or establish a task force for reviewing your materials for sex bias.

H. One comment concerned the “overlap” of Title IX with other Civil Rights rules and suggested combining the Title IX regulations with regulations published under Title VI of the Civil Rights Act of 1964. Consideration was given to this approach. However, because of the many exceptions in both Title IX and the HFW regulations and because of the additional requirements (e.g., self-evaluation, § 15a.3) on Title IX recipients not required under the Title VI regulations, it was not feasible to amend the Title VI regulations to cover sex discrimination in federally-assisted education programs.

I. It was observed that the notification requirements, §§ 15a.7, 15a.8, may “result in a very negative reaction toward the recipient agency and to the USDA.” Unfortunately, this may result from any type of civil rights effort. However, notification is necessary and it is hoped that CES clientele will accept the need for this requirement.

J. One comment requested CES examples of exempt activities under § 15a.15. Paragraph 15a.15(a) concerns only Girls State and Nation Conference and Boys State and Nation Conferences as sponsored by the American Legion. There is a specific statutory exemption for these Conferences. Since these exemptions are to be interpreted narrowly, it is our opinion that CES cannot sponsor similar events and be exempt. Paragraph 15a.15(b) authorizes father-son and mother-daughter activities at an educational institution. It is our interpretation that this exemption (also provided for specifically by statute) applies only to activities sponsored by and at an educational institution. Since CES is not an educational institution, as defined in § 15a.2(g), there is no basis for its programs or activities being exempt. Paragraph 15a.15(c) authorizes scholarships for sex-exclusive “beauty” pageants. Although we doubt that CES sponsors such activities, if it did, then presumably the exemption would apply.

K. One comment questioned whether the regulations require or prohibit competitions offering separate awards for boys and girls. Clearly separate awards are not required, 20 U.S.C. 1681(b), and it is our opinion that sex-segregated contests are inconsistent with Title IX. See §§ 15a.31 (a) and (b). When a person is not allowed to compete in a particular group because of his or her sex, that person is “excluded from participating in” that activity. To segregate boys and girls for contest purposes is to subject those individuals to discrimination. When boys are not permitted to compete with girls, and vice versa, the individuals are “denied the benefits of” competing for and possibly winning an award that has been reserved for the other sex. It should be noted, however, that individuals may be grouped for contest purposes, “by ability as assessed by objective standards of individual performance developed and applied without regard to sex.” § 15a.34(b).

L. One comment urged that the collection of sex-based data not be required, because the participation data would not prove either compliance or discrimination. As we indicated in III. C, above, statistics may not be conclusive proof, but they are indicators and can aid in the analysis of a particular situation. 20 U.S.C. 1681(b).


Bob Bergland,
Secretary of Agriculture.

Part 15a is added as read to set forth below:

PART 15a—EDUCATION PROGRAMS OR ACTIVITIES RECEIVING OR BENEFITTING FROM FEDERAL FINANCIAL ASSISTANCE

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Subpart A—Introduction

§ 15a.1 Purpose and effective date.

The purpose of this part is to effectuate Title IX of the Education Amendments of 1972, as amended by Pub. L. 93-568, 86 Stat. 1855 and Pub. L. 94-482, 90 Stat. 2234 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part.

§ 15a.2 Definitions.

As used in this part, the term:


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

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

(d) "Federal financial assistance" means any of the following, when authorized or extended under a law administered by the Department:

(1) A grant or loan of Federal financial assistance, including

(1) The acquisition, construction, renovation, restoration, or repair of a building or facility; or any portion thereof; and

(2) Scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for in the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property of any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient, or in recognition of public interest to served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

(e) "Recipient" means the State or political subdivision thereof, of any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance, including any subunit, successor, assignee, or transferee thereof.

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

(g) "Educational institution" means a local educational agency (L.E.A.) as defined by section 801(f) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 881), a preschool, a private elementary or secondary school, or an applicant or recipient of the type defined by paragraph (h), (i), (j), or (k) of this section.

(h) "Institution of graduate higher education" means an institution which:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences; or

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

(i) "Institution of undergraduate higher education" means:

(1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree;

(3) An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study.

(j) "Institution of professional education" means an institution (except any institution of undergraduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the United States Commissioner of Education.

(k) "Institution of vocational education means a school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study.

(l) "Administratively separate unit" means a school, department or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

(m) "Admission" means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, participation, or matriculation in or at an education program or activity operated by a recipient.

(n) "Student" means a person who has gained admission.

(o) "Transition plan" means a plan subject to the approval of the United States Commissioner of Education pursuant to section 901(a) of the Education Amendments of 1972, under which an educational institution operates in making the transition from being an educational institution which admits only students of one sex to being one which admits students of both sexes without discrimination.

(p) "Educational recipient" means an educational institution as defined in
§ 15a.2(g) and every other recipient which has education as a significant purpose.

(q) "Education program or activity" means:

(1) Every program or activity operated by an educational recipient; and

(2) Every program or activity operated by the recipient where a significant purpose of the financial assistance is education.

(r) "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States. and the term "State" means any one of the foregoing.

§ 15a.3 Remedial and affirmative action and self-evaluation.

(a) Remedial action. If the Secretary finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the Secretary deems necessary to overcome the effects of such discrimination.

(b) Affirmative Action. In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.

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

(1) Evaluate in terms of the requirements of this part its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(2) Modify any of those policies and practices which do not or may not meet the requirements of this part; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.

(d) Availability of self-evaluation and related materials. Recipients shall maintain on file for at least three years following the effective date of this part or completion of the evaluation required under paragraph (c) of this section, whichever is longer, and shall provide the Secretary upon request, a description of any modifications made pursuant to paragraph (c)(1) of this section and of any remedial steps taken pursuant to paragraph (c)(3) of this section.

§ 15a.4 Assurance required.

(a) General. Every application for Federal financial assistance for any education program or activity shall be accompanied by an assurance from the applicant or recipient, satisfactory to the Secretary, that each education program or activity operated by the applicant or recipient and to which this part applies will be operated in compliance with this part. An assurance of compliance with this part shall not be satisfactory to the Secretary if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § 15a.3(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior or subsequent to the submission to the Secretary of such assurance.

(b) Transfers of Property. If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee which operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government both the transferee and the transferee shall be deemed to be recipients subject to the provisions of subpart B.

(c) Duration of obligation. (1) In the case of Federal financial assistance extended to provide personal property, such assistance shall 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 to provide an education program or activity.

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

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

(d) Form. The Secretary will specify the form of the assurances required by paragraph (a) of this section and the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

15a.5 Effect of other requirements.

(a) Effect of other Federal provisions. The obligations imposed by this part are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended; Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); the Equal Pay Act (29 U.S.C. 206 and 206(d)); and any other act of Congress or Federal regulation.

(b) Effect of State or local law or other requirements. The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex to practice any occupation or profession.

(c) Effect of rules or regulations of private organizations. The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives or benefits from Federal financial assistance.

(d) Effect of compliance with HEW regulations. If a recipient is covered by the title IX regulations issued by HEW, 45 CFR Part 86, and has already complied with the HEW requirements corresponding to §§ 15a.3(c), 15a.4(a), 15a.7(a) and (b), and 15a.8(a) and (b), then the requirements of those sections need not be duplicated in order to comply with this part. However, if the requirements have not been applied to all programs funded by this Department, then the requirements will have to be met as to those programs.

15a.6 Effect of employment opportunities.

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 members of one sex than for members of the other sex.

15a.7 Designation of responsible employee and adoption of grievance procedures.

(a) Designation of responsible employee. Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its
responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) Complaint procedure of recipient. A recipient shall adopt and publish grievance procedures providing for prompt, and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

15.8 Dissemination of policy.

(a) Notification of policy. (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities which it operates, and that it is required by Title IX and this part not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the Secretary finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and this part, but shall state at least that the requirement not to discriminate in education programs and activities extends to employment therein and to admission thereto unless Subpart C does not apply to the recipient, and that inquiries concerning the application of Title IX and this part to such recipient may be referred to the employee designated pursuant to 15.7 or to the Secretary.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of the effective date of this part or of the date this part first applies to such recipient, whichever comes later, which notification shall include publication in: (i) Local newspapers, (ii) newspapers and magazines operated by such recipient or by student, alumni, or alumni groups for or in connection with such recipient; and (iii) memoranda or other written communications distributed to every student and employees of such recipient.

(b) Publications. (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form which it makes available to any person of a type described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in this paragraph which suggests, by text or illustration, that such recipient treats applicants, students, employees differently on the basis of sex except as such treatment is permitted by this part.

(c) Distribution. Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and require such representatives to adhere to such policy.

Subpart B—Coverage

15.11 Application.

Except as provided in this subpart, this Part 15a applies to every recipient and to each education program or activity operated by such recipient which receives or benefits from Federal financial assistance.

15.12 Educational institutions controlled by religious organizations.

(a) Application. This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization.

(b) Exemption. An educational institution which wishes to claim the exemption set forth in paragraph (a) of this section shall do so by submitting in writing to the Secretary a statement by the highest ranking official of the institution identifying the provisions of this part which conflict with a specific tenet of the religious organization.

§ 15.13 Military and merchant marine educational institution.

This part does not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

§ 15.14 Membership practices of certain organizations.

(a) Social fraternities and sororities. This part does not apply to the membership sororities which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) YMCA, YWCA, Boy Scouts, Boy Scouts and Camp Fire Girls. This part does not apply to the membership practices of the Young Men's Christian Association, the Young Women's Christian Association, the Girl Scouts, the Boy Scouts and Camp Fire Girls.

(c) Voluntary youth service organizations. This part does not apply to the membership practices of voluntary youth service organizations which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954 and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

§ 15.15 Exempt activities.

(a) These regulations shall not apply to:

(1) Any program or activity of the American Legion undertaken in connection with the organization or operation of any Girls State Conference, Girls Nation Conference, Boys State Conference, Boys Nation Conference, or

(2) The selection of students to attend any such conference.

(b) These regulations shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex.

(c) These regulations shall not apply with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only, so long as such pageant is in compliance with other nondiscrimination provisions of Federal law.

§ 15.16 Admission.

(a) Admission to educational institutions prior to June 24, 1973, are not covered by this part.

(b) Administratively separate units. For the purpose only of this section, §§ 15.17 and 15.18, and Subpart C, each administratively separate unit shall
be deemed to be an educational institution.

(c) Application of Subpart C. Except as provided in paragraph (c) and (d) of this section, Subpart C applies to each recipient. A recipient to which Subpart C applies shall not discriminate on the basis of sex in admission or recruitment in violation of that subpart.

(d) Educational institutions. Except as provided in paragraph (e) of this section as to recipients which are educational institutions, Subpart C applies only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) Public institutions of undergraduate higher education. Subpart C does not apply to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex.

§ 15a.17 Education Institutions eligible to submit transition plans.

(a) Applications. This section applies to each educational institution to which Subpart C applies which:

(1) Admitted only students of one sex as regular students as of June 23, 1972; or

(2) Admitted only students of one sex as regular students as of June 23, 1965, but thereafter admitted as regular students, students of the sex not admitted prior to June 23, 1965.

(b) Provision for transition plans. An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of Subpart C until it has carried out a transition plan approved by the United States Commissioner of Education as described in 15a.18, which plan provides for the elimination of such discrimination by the earliest practicable date but in no event later than June 23, 1979.

§ 15a.18 Transition plans...

(a) Submission of plans. An institution to which 15a.17 applies and which is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) Content of plans. In order to be approved by the United States Commissioner of Education, a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education (FICE) Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed.

The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes, as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) Nondiscrimination. No policy or practice of a recipient to which § 15a.17 applies shall result in treatment of applicants to or students of such recipient in violation of Subpart C unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle is provided as required by paragraph (b)(4) of this section.

(d) Effects of past exclusion. To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § 15a.17 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs which emphasize the institution’s commitment to enrolling students of the sex previously excluded.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

§ 15a.21 Admission.

(a) General. No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies, except as provided in §§ 15a.17 and 15a.18.

(b) Specific prohibitions. (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise.

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission which has a disproportionally adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria which do not have such a disproportionally adverse effect are shown to be unavailable.

(c) Prohibitions relating to marital or parental status. In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;

(3) Shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Mrs." or "Mrs. A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

§ 15a.22 Preference in admission.

A recipient to which the subpart applies shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity which admits as students only or
predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of this subpart.

§ 15a.33 Housing.

(a) General. A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) Housing provided by recipient. (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing;

(ii) Comparable in quality and cost to the student.

(c) Other housing. (1) A recipient shall not on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than provided by such recipient.

(2) A recipient which through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as provided to students of one sex, when compared to that provided to students of the other sex, is as a whole: (i) Proportionate in quantity and (ii) comparable in quality and cost to the student. A recipient may render such assistance to any agency, organization, or person which provides all or part of such housing to students only of one sex.

§ 15a.34 Access to course offerings.

A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music and adult education courses.

(a) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective
date of this regulation. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(b) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(c) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball and other sports, the purpose or major activity of which involves bodily contact.

(d) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards which do not have such effect.

(e) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(f) Recipients may make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.

§ 15a.35 Access to schools operated by LEA.

A recipient which is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

§ 15a.36 Counseling and use of appraisal and counseling materials.

(a) Counseling. A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) Use of appraisal and counseling materials. A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipient shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) Disproportion in classes. Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the basis of sex in counseling or appraisal materials or by counselors.

§ 15a.37 Financial assistance.

(a) General. Except as provided in paragraph (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

(1) On the basis of sex, provide different amounts or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria or otherwise discriminate;

(2) Through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient’s students in a manner which discriminates on the basis of sex; or

(3) Apply any rule or assist in application of any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) Financial aid established by certain legal instruments. (1) A recipient may administrate or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests or similar legal instruments or by acts of a foreign government which require that awards be made to members of a particular sex specified therein: Provided, That the overall effect of the award of such sex-restricted scholarships, fellowships and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designed for a member of that student’s sex.

(c) Athletic scholarships. (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and § 15a.41.

§ 15a.38 Employment assistance to students.

(a) Assistance by recipient in making available outside employment. A recipient which assists any agency, organization or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person which discriminates on the basis of sex in its employment practices.

(b) Employment of students by recipients. A recipient which employs any of its students shall not do so in a manner which violates Subpart E.

§ 15a.39 Health and insurance benefits and services.

In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not
discriminate on the basis of sex, or provide such benefits, services, policy, or plan in a manner which would violate Subpart E if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.

§ 15a.40 Marital or parental status.

(a) Status generally. A recipient shall not apply any rule concerning a student’s actual or potential parental, family, or marital status which treats students differently on the basis of sex.

(b) Pregnancy and related conditions. (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity on the basis of such student’s pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the instructional program in the separate program is comparable to that offered to non-pregnant students.

(4) A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient’s educational program or activity.

(5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student’s physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

§ 15a.41 Athletics.

(a) General. No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics, offered by the recipient, and no recipient shall provide any such athletics separately on such basis.

(b) Separate teams. Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(c) Equal opportunity. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Secretary will consider, among other factors:

(1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(2) The provision of equipment and supplies;

(3) Scheduling of games and practice time;

(4) Travel and per diem allowance;

(5) Opportunity to receive coaching and academic tutoring;

(6) Assignment and compensation of coaches and tutors;

(7) Provision of locker rooms, practice and competitive facilities;

(8) Provision of medical and training facilities and services;

(9) Provision of housing and dining facilities and services;

(10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) Adjustment period. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

§ 15a.42 Textbooks and curricular material.

Nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

§ 15a.51 Employment.

(a) General. (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives or benefits from Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant’s or employee’s employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which
directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this part, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.

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

(1) Recruitment, advertising, and the process of application for employment;
(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;
(3) Rates of pay or any other form of compensation, and changes in compensation;
(4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;
(5) The terms of any collective bargaining agreement;
(6) Granting and return from leave of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;
(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;
(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;
(9) Employer-sponsored activities, including social or recreational programs; and
(10) Any other term, condition, or privilege of employment.

§ 15a.52 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity which has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and
(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

§ 15a.53 Recruitment.

(a) Nondiscriminatory recruitment and hiring. A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have in the past so discriminated, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) Recruitment patterns. A recipient shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

§ 15a.54 Compensation.

A recipient shall not make or enforce any policy or practice which, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

§ 15a.55 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements which classify persons on the basis of sex, unless sex is a bona fide occupational qualification for the positions in question as set forth in § 15a.61.

§ 15a.56 Fringe benefits.

(a) "Fringe benefits" defined. For purposes of this part, "fringe benefits" means: Any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave and any other benefit or service of employment not subject to the provision of § 15a.54.

(b) Prohibitions. A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex or for equal contributions to the plan by such recipient for members of each sex;

(3) Administer, operate, offer, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages or eligibility based on sex or which otherwise discriminates in benefits on the basis of sex.

§ 15a.57 Marital or parental status.

(a) General. A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) Pregnancy. A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) Pregnancy as a temporary disability. A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability for all job-related purposes, including commencement, duration and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and, under any fringe benefit offered to employees by virtue of employment.

(d) Pregnancy leave. In the case of a recipient which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as
a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

§ 15a.58 Effect of State or local law or other requirements.

(a) Prohibitory requirements. The obligation to comply with this part is not abated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex.

(b) Benefits. A recipient which provides any compensation service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

§ 15a.59 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless it is a bona fide occupational qualification for the particular job in question.

§ 15a.60 Pre-employment inquiries.

(a) Marital status. A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss or Mrs."

(b) Sex. A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

§ 15a.61 Sex as a bona fide occupational qualification.

A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient.
the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee, and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act by tending to establish and maintain, in the interests of producers and consumers, an orderly flow of oranges to market and avoid unreasonable fluctuations in supplies and prices. The action is not for the purpose of maintaining prices to farmers above the level which is declared to be the policy of Congress under the act. This amendment has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee met on April 4, 1979, and considered the need for amendment of the regulation. It recommended an increased quantity of navel oranges to be handled as herein specified. The committee reports the demand for navel oranges continues good on all sizes and grades.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared policy of the act. It is necessary to effectuate the declared purposes of the act to make this amendment effective as specified and handlers have been apprised of this amendment.

§ 907.759 (Amended)

1. Paragraph [a][1] in § 907.759 Navel Orange Regulation 459, as amended (44 FR 16940, 20385), is hereby further amended to read:

[1] District 1: 1,135,000 cartons

*(Secs. 1–18, 48 Stat. 31, as amended, 7 U.S.C. 601–674)*


Charles R. Broder.

Acting President, Fruit and Vegetable Division, Agricultural Marketing Service.

[Navel Orange Regulation 459 Amnd. 2]

[FR Doc. 79–1140 Filed 4–10–79; 4:45 am]

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Agricultural Marketing Service

7 CFR Part 1004

Milk in the Middle Atlantic Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the order based on milk industry proposals considered at a public hearing held in October 1978. More than the required two-thirds of dairy farmers affected approved the order as amended.

The amended order reduces pooling requirements for distributing plants and reserve processing plants and permits a federation of cooperative associations to operate a pool reserve processing plant. The order also increases the number of days' milk production of a producer that may be diverted monthly to nonpool plants as pooled milk during the months of September through February. The amended order reflects changed supply-demand conditions and methods of handling the market's reserve milk supplies and is necessary to assure orderly milk marketing in the area.

EFFECTIVE DATE: May 1, 1979.


SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:


Recommended decision issued January 10, 1979, published January 28, 1979 (44 FR 5140).


Findings and Determinations

The following findings and determinations are made for the order in this proceeding. They supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and affirmed, except where they may conflict with those set forth below.

[a] Findings upon the basis of the hearing record. A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Middle Atlantic marketing area. The hearing record according to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et. seq.), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

1. The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

2. The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insuring a sufficient quantity of pure and wholesome milk, and be in the public interest; and

3. The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

b) Additional findings. It is necessary in the public interest to make this order amending the order effective not later than May 1, 1979. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The recommended decision of the Acting Deputy Administrator, Marketing Program Operations, was issued January 19, 1979, and the decision of the Assistant Secretary containing all amendment provisions of this order was issued March 10, 1979. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective May 1, 1979, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the Federal Register. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559)

c) Determinations. It is hereby determined that: