Part III

Department of Agriculture

Office of the Secretary

Nondiscrimination—Direct USDA Programs and Activities; and Nondiscrimination on the Basis of Handicap Programs and Activities Receiving or Benefiting From Federal Financial Assistance
DEPARTMENT OF AGRICULTURE
Office of the Secretary

7 CFR Part 15
Nondiscrimination; Direct USDA Programs and Activities

AGENCY: Agriculture Department.

ACTION: Final rule.

SUMMARY: This rule prohibits agencies, officers, and employees of the Department of Agriculture from discriminating against qualified handicapped persons in any program or activity administered by the Department. Such discrimination is prohibited by Section 504 of the Rehabilitation Act of 1973, as amended by the Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978. The effect of this action will be to alert agencies, officers, and employees of the Department to the prohibitions of Section 504 of the Rehabilitation Act of 1973, as amended, until the Department develops more detailed regulations.

EFFECTIVE DATE: June 11, 1982.

FOR FURTHER INFORMATION CONTACT: William C. Payne, Jr., Policy and Operations Division, Office of Minority Affairs, U.S. Department of Agriculture, Washington, D.C. 20250. Phone: 202-382-1130 (voice and TTY—telecommunication device). Copies of this rule are available in Braille and on tape and will be provided upon request.

SUPPLEMENTARY INFORMATION: Section 504 of the Rehabilitation Act of 1973, as amended, by the Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978, [29 U.S.C. 794] provides that: "No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service." Accordingly, this rule will add "handicap" to the current prohibitions against discrimination on the bases of race, color, religion, sex, age and national origin in programs and activities conducted by the Department. Since no legal requirements are established beyond those contained in Section 504 itself, the Department, pursuant to 5 U.S.C. 553, for good cause finds that general notice of proposedrulemaking and public procedure thereon are unnecessary. The Secretary has determined that this regulation is not a major rule as defined by Executive Order 12291. According to that order, a major rule is one that is likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Department does not believe that this regulation will have any of these consequences. Its conclusion is based upon the fact that the regulation establishes no new legal requirements. As a result, it is not necessary to prepare a Regulatory Impact Analysis.

Furthermore, the Secretary has determined that this action will not have a significant economic impact on a substantial number of small entities because the regulation impacts on direct USDA programs only. Therefore, no Regulatory Flexibility Analysis is required.

Pending the issuance of Government-wide guidelines by the Department of Justice, the Department of Agriculture will develop more detailed regulations implementing Section 504 as its pertains to programs it conducts.

A final regulation similar to this regulation but pertaining to federally assisted programs, is being published simultaneously with this regulation.

List of Subjects in 7 CFR Part 15
Administrative practice and procedure. Civil rights, Government contracts, Grant programs—Agriculture, Loan programs—Agriculture.

For the reasons given above, Title 7, Part 15, Subpart B of the Code of Federal Regulations is amended as follows:

PART 15—NONDISCRIMINATION

1. The authority citation is revised to read as follows:


2. Section 15.51 is revised to read as follows:

§ 15.51 Discrimination prohibited.

(a) No agency, officer, or employee of the United States Department of Agriculture, shall exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color, religion, sex, age, handicap, or national origin under any program or activity administered by such agency, officer, or employee.

(b) No agency, officer, or employee of the Department shall on the ground of race, color, religion, sex, handicap, age, or national origin deny to any person in the United States: (1) Equal access to buildings, facilities, structures, or lands under the control of any agency in this Department, equal opportunity for employment, for participation in meetings, demonstrations, training activities or programs, fairs, awards, field days, encampments, for receipt of information disseminated by publication, news, radio, and other media, for obtaining contracts, grants, loans, or other financial assistance or for selection to assist in the administration of programs or activities of this Department.

Dated: June 3, 1982.

John R. Block, Secretary.

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7 CFR Part 15b

Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance

AGENCY: Agriculture Department.

ACTION: Final rule.

SUMMARY: This rule prohibits entities which operate programs assisted by this Department from discriminating against qualified handicapped persons on the basis of handicap. The rule is necessary to implement section 504 of the Rehabilitation Act of 1973, as amended, and Executive Order 12250 of November 2, 1980, Leadership and Coordination of Nondiscrimination Laws. The effect of this action will be to define and forbid acts of discrimination in the operation of programs and activities and to specify certain administrative requirements to reduce the possibilities for discrimination.

The public is advised that the general government guidelines published in 1976 by the then Department of Health, Education and Welfare are now under review by the Department of Justice. Should the Department of Justice determine that the general government guidelines should be revised, the Department of Agriculture will revise its Section 504 regulations accordingly. In light of the possibility that the 504
regulations published here may be subject to such a revision, the Department will receive public comments on possible changes and on the economic impact of these regulations. This announcement does not commit the Department in any way to change its regulations.

DATES: Effective Date: July 12, 1982. Comments should be received by August 10, 1982.

ADDRESS: Comments should be directed to Isidoro Rodriguez, Acting Director, Office of Minority Affairs, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: William C. Payne, Jr., Policy and Operations Division, Office of Minority Affairs, U.S. Department of Agriculture, Washington, D.C. 20250. Phone: 202-382-1130 (voice and TDD—telecommunications device). Copies of this rule are available in Braille and on tape and will be provided upon request. Though not required by Executive Order 12291, a Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is also available upon request from the above named individual.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Information collection requirements contained in this regulation, § 158.8(c), have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0585-005.

Background

Section 504 of the Rehabilitation Act of 1973, as amended, provides that: "No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service." These regulations implement Section 504 as it pertains to federally assisted programs and activities, that is, where Federal assistance flows from the Department through an intermediary called a recipient. Regulations to implement section 504 as it pertains to federally conducted programs will be considered in the future.

On April 28, 1976, Executive Order 11914, "Nondiscrimination with Respect to the Handicapped in Federally Assisted Programs," was issued. This Executive Order assigned to the Department of Health, Education, and Welfare (HEW) the responsibility for coordinating the implementation of section 504 for federally assisted programs. HEW published "Implementation of Executive Order 11914" (45 CFR 85.1-85.99), guidelines for Federal agencies, on January 13, 1978. The regulations established Federal agency responsibilities, standards for determining who are handicapped persons, and guidelines for determining discriminatory practices in employment and program services.

The HEW guidelines recognized that because of the diversity of types of handicaps and the variety of settings in which federally assisted programs are offered, the prohibition of discrimination would not itself be sufficient to ensure handicapped persons an equal opportunity to enjoy benefits. For example, admission of a hearing-impaired person to an educational program would be meaningless unless adequate visual materials or an interpreter were also provided. Accordingly, the guidelines specified that recipients be required to make special accommodations for handicapped persons where necessary and even to provide special programs if that is the only way in which an equal opportunity to participate in the federally assisted program can be assured. At the same time, the guidelines took into consideration the financial and human burdens entailed in making federally assisted programs accessible to handicapped persons and made allowances to minimize hardship.

In developing proposed regulations to implement section 504, the Department of Agriculture followed the HEW guidelines and that Department's own section 504 regulations which were later adopted by the Department of Health and Human Services (45 CFR 84.1-84.99) and by the Department of Education (34 CFR 84.1-84.99). The Department of Agriculture's proposed section 504 regulations were published on January 29, 1979 (44 FR 4620) and widely distributed among organizations representing handicapped persons.

Federal agencies, and entities administering programs assisted by the Department. A thorough discussion of the public comment received is contained below in Explanation of Revisions and Response to Comments. On November 2, 1983, Executive Order 12290 and Coordination of Nondiscrimination Laws, transferred coordination authority for the implementation of section 504 in regard to federally assisted programs from the Department of Health and Human Services, which had succeeded the Department of Health, Education, and Welfare, to the Department of Justice. On August 4, 1981, at 46 FR 45996, the Department of Justice redesignated the HEW Guidelines of January 13, 1978, entitled "Implementation of Executive Order 11914," as Department of Justice Guidelines. The guideline will be recodified at 28 CFR Part 41.

In compliance with Executive Order 12290 and "Implementation of Executive Order 11914" these regulations have been reviewed and approved by the Department of Justice, the Equal Employment Opportunity Commission, and the Architectural and Transportation Barriers Compliance Board.

On June 19, 1981, the District Court in Paralyzed Veterans of America v. Smith (No. 79-1979 C.D. Cal.), granted a preliminary injunction ordering Federal agencies to publish final regulations on an expedited basis implementing section 504. This rule is being published pursuant to the Court order.

Classification

The Secretary has determined that this regulation is not a major rule as defined by Executive Order 12291. According to that order, a major rule is one that is likely to result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individuals industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Department does not believe that its section 504 regulations will have any of these consequences. Its conclusion is based upon cost estimates for recipients implementing the regulation, the various elements of flexibility that have been incorporated into the regulation to minimize cost, and estimated benefits for handicapped persons and society that will result. Each of these considerations cut across all of the factors involved in determining whether or not a regulation is a “major rule”.

Regulatory Flexibility Analysis

The Secretary has determined that this action will not have a significant economic impact on a substantial number of small entities because of allowances in the regulations for
recipients to adopt the least costly methods of achieving compliance where existing facilities are inaccessible or to choose other means of complying with requirements for existing facilities if compliance would result in the impairment of significant features of historic properties. In addition, employers are only required to make accommodations for qualified handicapped persons if those accommodations do not cause an undue economic hardship on the operation of the assisted program. Certain administrative requirements are also waived for recipients employing fewer than fifteen persons.

**Overview of the Regulations**

The regulations are divided into seven parts. Subpart A, General Provisions, establishes basic definitions, concepts of nondiscrimination, and administrative requirements. Key definitions are those for recipient, Federal financial assistance, and qualified handicapped persons. The subpart generally prohibits recipients from discriminating against qualified handicapped persons solely on the basis of handicap through exclusion from program participation, denial of benefits, or other discriminatory actions. Accommodative requirements include an assurance of nondiscrimination, designation of an employee responsible to coordinate compliance with the regulations, adoption of a grievance procedure, notification of interested persons that the recipient does not discriminate on the basis of handicap and that its program is accessible, and a self-evaluation of the program by the recipient. The subpart also specifies when remedial actions can be required and when they can be adopted voluntarily. Finally, Subpart A advises recipients that administrative requirements, adequately completed in compliance with regulations of other Federal agencies or State agencies, will satisfy this regulation.

Subpart B, Employment Practices, develops the basic concept of nondiscrimination in terms of employment by the recipient. All terms, conditions and privileges of employment are covered. In particular, recipients are prohibited from making preemployment inquiries as to whether an applicant is a handicapped person or the nature or severity of a handicap except in certain limited situations and then only in compliance with the regulations. Beyond the prohibition of discriminatory practices, the subpart requires recipients to make reasonable accommodations to the known physical or mental limitations of otherwise qualified handicapped applicants or employees. Accommodations that are unreasonable, that is, that impose an undue hardship on the operation of the program, are not required. Administrative issues to be considered in determining the reasonableness of accommodations are listed.

Subpart C, Program Accessibility, describes what is meant by nondiscrimination in regard to the accessibility of facilities. Two standards are set, one for existing facilities and one for new construction and alterations. Where existing facilities are inaccessible, recipients can make the assisted program accessible through such means as the relocation of services to accessible facilities, the provision of aids, or home visits. Only when nonstructural alternatives are inadequate to provide handicapped persons with an equal and effective opportunity to participate in the program are structural alterations or new construction required. In this case, a transition plan must be prepared describing the steps necessary to complete the structural changes in the three-year period allowed for such changes. All new construction and alterations must be designed and constructed to be accessible.

Subpart D, Preschool, Elementary, Secondary, Adult, and Extension Education, specifies the meaning of program accessibility for these programs. Public elementary and secondary programs must identify handicapped persons entitled to services and provide them with a free appropriate public education. Recipients operating public elementary and secondary education programs must also meet certain technical standards and procedural safeguards in the evaluation, placement, and reevaluation of handicapped persons who need or are believed to need special education or related services. Recipients operating private elementary and secondary education programs must provide qualified handicapped persons with an appropriate education in an integrated setting for both academic and nonacademic activities. Private school recipients are not held, however, to the same technical and procedural requirements for special education programs as public school recipients and may charge a handicapped person more than a nonhandicapped person if the provision of services to a handicapped person results in substantial cost increases. Both public and private education programs are prohibited from discriminating in the operation of food service programs and are specifically directed to provide special meals at no extra charge to students whose handicap restricts their diet. Recipients operating extensive education programs must make their services, including camping activities and program materials, accessible to handicapped persons.

Subpart E, Postsecondary Education, prohibits recipients operating postsecondary education programs, including vocational education programs, from discriminating on the basis of handicap in admissions and enrollment and in the provision of academic and nonacademic services. Included in the latter are housing, financial aid and employment assistance.

Subpart F, Other Programs and Activities, prohibits discrimination in programs and activities not covered by subparts D and E. Recipients are required to provide effective notice concerning benefits, waivers of rights, or consent to treatment to persons with impaired sensory or speaking skills. In particular, recipients operating hospital programs must establish a procedure for providing emergency treatment for the hearing-impaired and may not discriminate in the admission or treatment of drug or alcohol abusers.

A new section on multi-family rental housing requires that five percent or at least one of the units in new rental housing projects must be accessible or adaptable to physically handicapped persons. To allow for local market conditions, some flexibility is permitted in the number of accessible or adaptable units required above one.

Subpart G stipulates that the same procedural provisions applicable to the enforcement of Title VI of the Civil Rights Act of 1964 will apply to the regulations implementing Section 504 of the Rehabilitation Act of 1973. These procedures provide for monitoring of compliance, receipt of complaints, processing, hearings, termination of assistance, and enforcement by any other means authorized by law.

**Explanation of Revisions and Responses to Comments**

The Department of Agriculture’s final regulations implementing section 504 of the Rehabilitation Act of 1973 have been patterned after the section 504 regulations of the Department of Health and Human Services (HHHS) (42 FR 22675 (1977), 45 CFR 84.1–84.99 (1979)) and the Department of Education (ED) (45 FR 30803 (1980), 34 CFR 84.1–84.99 (1980)). The Department adapted this approach in order to simplify compliance for its many recipients who are also affected by the HHHS or ED regulations. Since analyses of each section of the HHHS and
ED section 504 regulations were published with those regulations, this section is intended to supplement rather than repeat those analyses. Other general interpretive material can be found in the guidelines, "Implementation of Executive Order 11914," (43 FR 1231 (1978); 45 CFR 85.3-85.95), originally published by the Department of Health, Education and Welfare and subsequently adopted by the Department of Justice according to Executive Order 12250 (45 FR 72995 (1980). The Department of Health and Human Services' published Policy Determinations (43 FR 18629 (1978) and 43 FR 36033 (1978)) address specific issues.

The final regulations have also been patterned after the Department's regulations implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d (relating to race, color and national origin), and Title IX of the Education Amendments of 1972, as amended, 42 U.S.C. 1683 (relating to sex), except where the legislative history of section 504 or government policy has required a different approach. The Department's Title VI regulations appear at 7 CFR 15.1-15.12 and 15.60-15.124 (1980), and the Title IX regulations appear at 7 CFR 15a.1-15a.71 (1980).

The Department received 74 letters of official comment on the proposed regulations containing approximately 250 recommendations. Most of these comments were from recipients or organizations representing recipients and from agencies within the Department. Nearly every section of the regulations received some comment. In general commenters approved of the regulations and their similarity to the HHS and ED sections 504 regulations. One frequent recommendation was that the regulations should be tailored more specifically to this Department's programs. As a result, several agencies of the Department were involved in preparing new language pertaining to specific program areas.

Other concerns of commenters were the potential costs of making existing facilities accessible, the meaning of requirements for auxiliary aids, and the administrative burdens involved in compliance. The Department has attempted to respond to these concerns either by modifying the proposed regulations or by explaining the regulatory requirements.

Several editorial changes have been made to the text of the proposed regulations in the interest of clarity. These changes are minor and will not be discussed below.

Subpart A—General Provisions
Section 15b.1 Purpose.

This section has been rewritten to conform to the language of section 504 of the Rehabilitation Act of 1973.

Several commenters suggested that the regulations be revised to implement the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95-602, 92 Stat. 2955 (1978). The regulations have been revised to incorporate those sections of the 1978 amendments which affect Federally assisted programs and activities.

Consequently, the phrase, "as amended," has been added to this section.

We note that the 1978 amendments include a provision prohibiting Executive agencies from discriminating against qualified handicapped individuals in programs which those agencies operate themselves. While these regulations express the Department's general policies in regard to programs and activities which it directly administers, the regulations are not strictly applicable to such programs and activities. The Department is considering what additional regulations may be necessary to carry out this provision of the 1978 amendments.

Section 15b.2 Applicability.

In response to a comment and because of the Department's desire to clarify the applicability of these regulations, this section has been rewritten to conform the language in this section to the language in section 504 of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, as amended, and the Department's Title VI regulations.

This section has also been modified by adding language to clarify the applicability of the specific subparts.

Section 15b.3 Definitions.

Section 15b.3(a) The Act.

The definition of "Executive Order" has been deleted because Executive Order 11914 is not referred to in the body of the regulations.

Reference to the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95-602, 92 Stat. 2955 (1978), has been added to the definition of "the Act" as recommended in several comments, and because these regulations have been revised to incorporate those sections of the 1978 amendments which affect Federally assisted programs and activities.

Section 15b.3(f) (formerly, § 15b.3(g)) Recipient.

One commenter asked that the extent of coverage for States and their political subdivisions be clarified. Another suggested that definitions for primary recipient, sub-recipient, and beneficiary be added. The Department recognizes that questions as to the meaning of the term, "recipient," may arise in specific situations, especially in programs which refer to ultimate beneficiaries as recipients. However, the Department feels that these questions can best be resolved through program guidelines and case by case interpretations rather than by expanding the definition of "recipient." For purposes of these regulations, "recipient" will have the same meaning as it has in the Department's Title VI regulations.

Section 15b.3(g) (formerly, § 15b.3(i)) Federal financial assistance.

Two commenters pointed out that certain types of assistance, special use permits and food commodities in particular, were not clearly included in the definition of Federal financial assistance. The Department considers special use permits issued for less than fair market value, for reduced consideration or in recognition of the public nature of the assisted recipient program or activity to be Federal financial assistance and has added the phrase, "use (on other than a casual or transient basis) of Federal property for less than fair market value, for reduced consideration, or in recognition of the public nature of the recipient's program or activity," to the list of covered real and personal property (§ 15b.3(e)(3)(i)), in order to clarify the Department's interpretation of Federal financial assistance and to conform the definition to that which appears in the Department's Title VI and Title IX regulations. The phrase, "any other thing of value," has been added to cover food commodities as well as other forms of assistance not specifically included in the proposed definition of "Federal financial assistance."

One commenter requested that definitions of indirect and direct assistance be added to the regulations. The Department does not feel that this is necessary since the regulations will apply to the same recipients as have been covered by our Title VI regulations for indirect assistance. Several comments questioned whether contracts of assurance or guarantee should be excluded from the definition. The Department has retained the exclusion as it is consistent with the legislative.
history of Section 504 and government policy. The interpretation of "contracts of insurance or guarantee" will be the same as used under Title VI. As recommended by one commenter, formula allocations have been added to the list of covered arrangements between recipients and the Department.

Section 15b.3(g) Applicant for assistance.

The definition of "applicant for assistance" has been deleted since the term is self-explanatory.

Section 15b.3(i) (formerly, § 15b.3(k)) Handicapped person.

Several commenters raised questions about the manner in which handicapped persons were to be identified. Section 504 and these regulations do not require that recipients identify which of their beneficiaries or employees are handicapped. Rather, recipients are to provide equitable services and employment opportunities to all qualified persons. Where handicapped persons have requested special programs or employment accommodations, recipients may, in certain cases, require medical certification that such accommodations are necessary because of a physical or mental impairment. However, there is no general requirement that physical or mental impairments be medically certified in order for a person to qualify as handicapped. In fact, it is not even necessary for a "handicapped person" to have a physical or mental impairment as long as a recipient regards that person as having such an impairment.

Section 15b.3(j) (formerly, § 15b.3(k)(i)(B)) Physical or mental impairment.

Positive comments were received on the partial list of diseases and impairments in § 15b.3(i)(2) which constitute physical and mental impairments.

Section 15b.3(k) (formerly, § 15a.3(e)(2) Major life activities.

One commenter recommended that the definition of major life activities be modified to reflect the definitions used in the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978. The Department considers the two definitions to be compatible and has therefore not amended the regulations.

Section 15b.3(n) (formerly, § 15b.3(l)) Qualified handicapped person.

The Department regards the terms, "otherwise qualified handicapped person" and "qualified handicapped person," to be synonymous. Like HHS and ED this Department means by these terms handicapped persons who are qualified in spite of their handicap (43 CFR Part 2 at p. 405). The definition is consistent with Southeastern Community College v. Davis, 442 U.S. 397, 406-407 (1979).

No change has been made to the basic definition of qualified handicapped persons with respect to employment. Even though the definition refers to handicapped persons who, with reasonable accommodation, can perform the essential functions of the job in question, the definition does not exclude handicapped persons who do not need any accommodation. The requirement that handicapped persons be able to perform essential job functions has been retained to conform to DOJ guidelines. In judging whether essential job functions can be performed, recipients may hold handicapped applicants to the same standards of education, training, and experience as are applied to nonhandicapped applicants.

Further guidance on the qualifications of alcoholics and drug addicts has been added to this section in accordance with the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978. This language means that alcoholism and drug addiction, in themselves, cannot be used to disqualify persons for employment. However, inability to fulfill the duties of the job or endangering property or the safety of others, due to current alcohol or drug abuse, are legally disqualifying factors.

The definition of qualified handicapped person for purposes of postsecondary and vocational education has been modified by specifying that a handicapped person must meet "all" rather than "the" academic and technical standards requisite to admission or participation in the recipient's education program or activity. This was done to clarify the Department's intention to respect bona fide academic and technical standards of postsecondary and vocational education programs.

With regard to other services, including extension education, recipients that are not now serving qualified handicapped persons because of the inaccessibility of their program must take steps to provide effective services to handicapped persons meeting valid requirements for program participation. Physical and mental abilities may be valid requirements for participation in certain types of programs and activities, as in the case of camps providing a wilderness experience, or private school offering only a college preparatory program.

Section 15b.4 Discrimination prohibited.

Most commenters approved of the language in this section or suggested that it be strengthened. A few requested clarifications or pointed out perceived hardships as a result of requirements for site selections, communications, and the extent of covered benefits. This section is the heart of the Department's Section 504 regulations and as such describes prohibited actions in general terms. Thus, while health and life insurance benefits are not specifically named, they and other similar arrangements of recipients can be inferred from the language of §§ 15b.4(b)(1) and 15b.4(b)(4). Applications of the general prohibitions of this section to particular situations will be found in the remaining subparts of this regulation and in pertinent program guidelines.

Section 15b.5 Assurances required.

A few commenters expressed concern that unnecessary paperwork would be required by this section. The Department does not wish to impose unreasonable administrative burdens on recipients and therefore plans to consolidate all civil rights assurances to incorporate these into standard forms, and to accept existing assurances whenever possible.

Section 15b.6 (formerly, § 15b.7 Designation of responsible employee and adoption of grievance procedures.

Section 15b.6(b) entitled "adoption of grievance procedures," has been revised slightly to conform to the comparable HHS and ED regulations.

The omission in the proposed regulation was inadvertent. A specific grievance procedure has not been provided to allow recipients the flexibility to develop a procedure appropriate to their programs. Grievance procedures required by other regulations will be acceptable as long as they comply with due process standards and provide for fair and equitable resolution of complaints.

Despite a comment that all recipients should be required to name a responsible employee and to adopt grievance procedures, the Department has retained the fifteen or more employees limitation as a reasonable criterion. This section does not require that an additional employee be hired to coordinate compliance. Recipients may select a person who has other civil rights duties, the responsible person named in compliance with
enforcement. In all cases, recipients are encouraged to coordinate their notice with other civil rights requirements.

Section 15b.8 (formerly, § 15b.8) Remedial action, voluntary action, and self-evaluation.

Many comments were submitted in regard to this section. As a result of one comment, § 15b.8(a)(3)(ii) has been added to permit the Secretary, where necessary to overcome the effects of discrimination in violation of section 504 or this part, to require remedial action on behalf of handicapped persons presently in the program but not receiving full benefits or equal and integrated treatment. Other comments on remedial actions questioned their necessity, legality, appropriateness without a review process, and their retroactive application. The Department believes that remedial action is an appropriate tool to overcome the effects of discrimination in violation of section 504 or this part. However, the Secretary may order remedial action only for violations which occur after the effective dates of section 504 and these implementing regulations. The enforcement procedures contained in Subpart F provide an adequate opportunity for a hearing.

The largest number of comments concerned the requirement for self-evaluation, its meaningfulness for small recipients, the implications of allowing flexibility in the process, the importance of involving handicapped persons, and the impact of requiring all recipients to maintain their self-evaluation for three years. No changes have been made to this subsection because the Department is convinced that the self-evaluation is a useful activity for all recipients. The requirement that recipients retain their self-evaluation records for three years deviates from the HHS regulations which apply such a requirement only to recipients employing 15 or more persons. While a number of commenters objected to this record-keeping requirement, the Department remains convinced that the retention of the self-evaluation records is necessary. In itself, create an unreasonable burden that would interfere with the assisted programs of small recipients.

The actual content of the self-evaluation will vary considerably depending on the size and nature of the recipients and the program. Even the smallest recipients, however, will necessarily generate some written material as they solicit the advice of handicapped persons or organizations representing handicapped persons, review their policies and practices, make necessary modifications to their policies and practices, and take appropriate remedial steps. More specific details on the elements of the self-evaluation have not been incorporated in order to allow the flexibility necessary for implementation by the wide range of recipients assisted by this Department. The involvement of handicapped persons in evaluating the accessibility of assisted programs and activities to qualified handicapped persons will greatly assist recipients in identifying the most effective and economical modifications to their programs. Where a recipient's program has been included in the self-evaluation of the programs of a parent institution or primary recipient, the self-evaluation requirement is met if all aspects of the recipient's program have been adequately evaluated and appropriate modifications and remedial steps have been implemented.

Section 15b.10 Effect of compliance with regulations of other Federal agencies.

The requirement for coordination with sections 502 and 505 of the Act has been deleted since it was directed toward Federal agencies and not recipients. In its place, the Department has inserted language on the effects of recipient compliance with regulations of other Federal agencies where such regulations overlap with the administrative requirements of these regulations. This has been done to emphasize that the Department does not wish to create unnecessary administrative burdens for recipients.

Section 15b.11 Interagency cooperation.

The language on interagency cooperation has been deleted because it required action by Federal agencies and is therefore not appropriate in a regulation intended for recipients. The Department is nevertheless committed to the principle of such cooperation.

Subpart B—Employment Practices

Several commenters objected to Subpart B's general prohibition of discrimination in recipient employment practices. They argued that section 504 should only apply to employment practices when employment is a primary objective of Federal financial assistance or when the recipient's employment discrimination results in discrimination against the ultimate beneficiaries of the program. In support, they cited the language and legislative history of section 504; the limited applicability of Title VI to employment situations; judicial interpretations of Title IX of the
Education Amendments of 1972; Section 120(a) of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978; and finally, the decisions in Trager v. Libbie Rehabilitation Center, Inc., 590 F.2d 67 (4th Cir. 1978), cert. denied, 442 U.S. 947 (1979) and Carmi v. Metropolitan St. Louis Sewer District, 620 F.2d 672 (8th Cir. 1980).

The Department has studied the arguments of these commenters and the recent decision in U.S. v. Cabrini Medical Center. — F.2d (2d Cir. 1981) but has determined that Subpart B must be retained in view of the legislative history of the Rehabilitation Act of 1973 and its amendments, including the legislative history of section 120(a) of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, the administrative construction of HHS and ED, and the remedial nature of section 504. However, Trager is currently the law in Maryland, North Carolina, South Carolina, Virginia, and West Virginia, all the states comprising the Fourth Circuit; Carmi is currently the law in Kansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota, the seven states comprising the Eighth Circuit; and Cabrini is currently the law in New York, Connecticut, and Vermont, the three states comprising the Second Circuit. Accordingly, pending further clarification of the law, the provisions of this subpart will be enforced in the Second, Fourth, and Eighth Circuit States only where employment is a primary objective of the Federal financial assistance or where discrimination against employees affects the ultimate beneficiaries of the assistance.

Section 15b.12 (formerly § 15b.13) Discrimination prohibited.

Two changes have been made to this section. First, § 15b.13(a)(2) of the proposed regulations has been deleted. This paragraph required recipients that receive assistance under the Education of the Handicapped Act to take positive steps to employ and promote qualified handicapped persons in programs assisted under that Act. Since the Department does not administer programs under the Education of the Handicapped Act, the requirement is inappropriate for these regulations. Recipients of the Department who are also recipients of Education of the Handicapped Act assistance from an agency outside the Department will be subject to that agency’s regulations.

The second change is the inclusion of volunteers in § 15b.12(a)(4). The Department has added this language because it would be an anomalous result of the regulations to protect program beneficiaries and recipient employees from discrimination on the basis of handicap but not to protect qualified handicapped volunteers. Under the regulations, all provisions of Subpart B that apply to employees will apply equally to volunteers, such as 4-H club leaders. This does not mean that the same procedures and benefits must be established for volunteers as for employees but that where comparable covered situations exist, discrimination is similarly prohibited. For example, recipients may not deny volunteer opportunities to categories of handicapped persons such as diabetics or refuse to provide reasonable accommodations to qualified handicapped volunteers unless such accommodations would impose an undue hardship on the operation of the program.

Section 15b.13 (formerly § 15b.4) Reasonable accommodation.

A number of comments were received on this section, most requesting more specific guidance on the meaning of the terms, “reasonable accommodation” and “undue hardship.” This section describes two general areas in which reasonable accommodations can be made, i.e., changes to the facility in which the handicapped person is employed and modifications to the handicapped employee’s job or work environment. Within these two categories, there are an indeterminate number of specific accommodations varying according to the purpose of the assisted program, nature and resources of the recipient, job requirements, handicapping condition, preferences of the handicapped person, and other factors. While a list of possible accommodations could be constructed, the reasonableness of such accommodations could not be determined without considering the specific compliance situation. For example, the provision of deaf interpreters may be a reasonable accommodation for a recipient governmental entity but may constitute an undue hardship for an individual entrepreneur who is a recipient. Examples of percent budget expenditures for accommodations would be inappropriate for many recipients and would quickly become outdated. The Department does not, however, consider expenditure of more than a negligible amount to be, in itself, an undue hardship.

While the Department has not provided a listing of possible reasonable accommodations, it is committed in its compliance procedures to provide assistance and guidance to recipients to help them comply voluntarily with the regulations in this part. In addition, recipients can obtain substantial assistance through consultation with handicapped persons during the self-evaluation process.

A new criterion, “the number of employees,” has been added to the factors to be considered in judging whether an accommodation imposes an undue hardship on the operation of a recipient’s program (§ 15b.13(c)). The Department believes that examination of the number of persons employed by a recipient is important in evaluating a recipient’s ability to restructure jobs or work schedules.

Two commenters recommended that a handicapped person’s ability to work safely be added to the factors for judging whether an accommodation would create an undue hardship. The Department gave serious consideration to this suggestion but decided that it was unnecessary since reasonable accommodations are only required for qualified handicapped persons. If safe procedures are essential to a job function, handicapped persons, like other applicants or employees, must meet valid safety standards in order to be considered qualified.

One commenter recommended that all deaf interpreters be required to meet certain standards of proficiency and ethical conduct. These regulations do not set such standards because of the diverse circumstances under which interpreters may be used and the availability of highly qualified interpreters. Nevertheless, recipients should be aware that the basic requirement of the regulation is to make assisted programs accessible to handicapped persons, and that the quality of interpreters provided has a direct effect on the ability of handicapped persons to participate fully in the recipient’s program or to take advantage of employment opportunities.

Subpart C—Program Accessibility

Section 15b.18 Existing facilities.

The numerous comments received on this section reflect the public’s great concern over the potential financial costs of making assisted programs accessible. The Department believes that many of these concerns are based on a misunderstanding of the requirements of the regulations. For those rare situations in which the achievement of program accessibility is infeasible, the Department, in certain
instances, has provided avenues for referrals or for modifications to the
requirements of the regulations.
Section 15b.18(b) Methods.
This is a critical section of the regulations in that it specifies when
structural alterations are required in existing facilities as opposed to less
costly methods of making programs accessible. It cannot be emphasized too
strongly that the purpose of this section is to make programs, not buildings
accessible. Existing buildings or
facilities must be made accessible only
when program services cannot be
adequately provided through any other
method. Structural modifications are
then only required to the extent
necessary to deliver the program
benefit. This concept is particularly
important in situations where facilities
have historical significance.
In choosing among nonstructural
methods of making programs accessible,
recipients must give priority to those
methods which offer programs and
activities to handicapped persons in the
most integrated setting appropriate to
obtain the full benefit of the program.
The phrase, "to obtain the full benefit of the program," has been added in order
to clarify the meaning of "most
integrated setting appropriate."
To illustrate, State Departments of
Social Services which contract with
banks for the distribution of food stamps
must ensure that handicapped persons
have convenient access to food stamps.

This does not mean that every bank
must be accessible. Program
accessibility can be accomplished by
selecting enough accessible banks to
give handicapped persons equivalent
access to food stamps, by contracting
with other accessible distributors, or by
mailing or delivering stamps to
handicapped beneficiaries. Since social
interaction or a particular setting is not
important to the distribution of food
stamps, each of these alternatives would
be acceptable. Recipients are
encouraged, however, to provide
services to handicapped persons in the
same setting as is used to serve
nonhandicapped persons.

On the other hand, a handicapped
person could only enjoy the full benefits
of a 4-H club program in an integrated
setting. If the existing site of club
meetings and activities is inaccessible, a
recipient could make the program
accessible by, among other methods,
changing the site, providing aides, or
making structural modifications to the
existing site. Recent material on the
subject of accessibility shows that such
modifications can often be made at little
cost.

One commenter asked whether
facilities must be structurally changed
for handicapped employees. Where
employment is a primary objective of
federal assistance, existing structures
will have to be altered to make the
program accessible to qualified
handicapped participants unless the
program can be made accessible through
some other means. However, in all other
programs assisted by this Department, a
recipient need not make structural
modifications for employees until a
qualified handicapped employee is hired
and the modifications are necessary as
reasonable accommodations
(§ 15b.13(b)). Recipients who foresee that the inaccessibility of their facility
will exclude or discourage qualified
handicapped employees are
nevertheless encouraged to make such
facilities accessible in advance of the
employment of handicapped persons.

Section 15b.18(c) Small providers.
The term, "small providers," has been
substituted for "small health, welfare, or
social service providers," to more
accurately reflect the broad range of
recipients assisted by the Department of
Agriculture. The referral option in this
paragraph applies to all recipients
including those operating educational
programs, except where conflicting
requirements of Subparts D, E, and F
take precedence. Before referring a
handicapped person to another provider,
small recipients have the responsibility
of ensuring that the other providers have
accessible programs that will provide
equivalent service to the handicapped
person at no additional cost to the
handicapped person.

Section 15b.18(d) Application for
waiver of requirements.
Many commenters requested some
general relaxation of the strict
requirement for program accessibility
which might require alterations to
eexisting facilities or the construction of
new facilities. Some feared that they
would be forced out of assisted
programs because of their financial
inability to make structural alterations
or undertake new construction. Others
pointed out that special problems are
involved where facilities have historic
significance.

Private schools, both church-related
and independent, participate in the
Department's school feeding programs.
These recipients expressed concern over
program accessibility requirements
since many of their facilities are old and
funds for renovation often limited.
Unlike public schools, these private
schools are generally not part of a
school system in which some schools
could be made accessible to fulfill the
requirement for program accessibility.
Also, many private schools would be
inflexible to make referrals under the
small provider provision (§ 15b.18(c))
because they have more than 15
employees.

The Department was also advised that
other private, nonprofit entities, such as
camps and residential
institutions for children and the elderly
may encounter difficulty in achieving
program accessibility. Like private
schools, these entities are often small,
without similar providers nearby for
referrals, and lacking funds to make
major alterations to facilities. Finally,
the Department was made aware that
recipients of special-use permits for land
in national forests and recipients
participating in forestry assistance
programs on private lands may need to
provide program accessibility in historic
properties.

The Department remains convinced that accessibility problems can be
resolved without imposing undue
handicap on the operation of the
recipient's program. Moreover, the rights of handicapped persons to accessibility
are a much more compelling need than
the temporary inconvenience that may result from the process of making
programs accessible. Nonetheless, in
rare instances where after completing a
self-evaluation a recipient determines
that program accessibility can only be
accomplished through substantial
modifications which would result in a
fundamental alteration in the nature of
the program, they may apply to the
Secretary for a modification of the
requirement.

Since substantial alterations to
historic properties could negate the
reasons for maintaining the property, the
Department has added a provision
allowing recipients to apply for a
modification of the requirements of
§ 15.18.

Recipients may make such an
application only after they have
completed a self-evaluation which meets
the requirements of § 15b.18(c) and
which shows that the only method that
can be used to make a program
accessible is one which substantially
impairs significant historic features of
properties listed in the National Register
of Historic Places. The Department
believes that in most cases other
effective methods will be identified
during the self-evaluation process,
especially if handicapped persons or
organizations representing handicapped
persons or organizations representing
handicapped persons are properly
involved. In addition, the Department
will provide necessary technical assistance to recipients who encounter special problems in achieving program accessibility.

Specific guidelines have been provided to assist recipients in making applications concerning properties listed in the National Register of Historic Places. The criteria have been recommended by the Advisory Council on Historic Preservation to eliminate any adverse effect of these regulations on properties that are included or that are eligible for inclusion in the National Register of Historic Places.

Section 15b.18(f) (formerly § 15b.18(d)) Time period.

One commenter requested that the time period for complying with § 15b.18(a), except for structural changes, be extended to 180 days. Although the Department recognizes that 60 days may not be adequate time for recipients to relocate programs or take other physical measures to make programs accessible, it has not changed the requirement. In cases where 60 days is not sufficient a recipient must take temporary measures such as making home visits or providing aids until permanent methods can be arranged. The purpose of the regulation is to ensure that handicapped persons are provided access to programs as soon as reasonably possible.

Section 15b.18(g) (formerly § 15b.18(e)) Transition plan.

The time for completing transition plans has been changed from six months to one year to permit closer coordination of this activity with the self-evaluation process. The determination of necessary structural changes is a logical-outgrowth of the recipient’s analysis of total program accessibility and necessary program modifications. Since structural changes may take considerable time and since the three-year deadline for making alterations or constructing new facilities has not been changed, recipients should complete the transition plan as quickly as possible within the first year after the effective date of these regulations.

Transition plans prepared in compliance with regulations of other agencies may meet the requirements of § 15b.18(f). Similarly, the transition plan of a parent institution or prime recipient may satisfy requirements of § 15b.18(f) if all provisions of that section are met in regard to the recipient’s program. One commenter objected to this section on the basis that it required companies to involve noninterested outsiders in management decisions. The Department rejects this argument on two grounds. First, handicapped persons are certainly interested in the continuing viability of recipient programs benefiting them. Second, although this section requires that recipients develop transition plans with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, final responsibility for the transition plan remains with recipients.

For specific information on physical barriers and appropriate modifications, recipients should consult the “American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped,” published by the American National Standards Institute, Inc. (ANSI A117.1—1980). Former § 15b.18(f), “Notice,” has been moved to § 15b.7. “Notice of nondiscrimination and accessible services,” the general notice requirement for recipients.

Section 15b.19 New Construction.

The standard which the Department will use for new construction and alterations is the “American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped,” published by the American National Standards Institute, Inc. (ANSI A117.1—1980). Approval to incorporate this standard by reference into 7 CFR Part 15b was granted by the Director of the Federal Register on June 8, 1981.

This standard, approved by the Institute on March 3, 1980, is currently the best nationally-recognized standard available for making facilities accessible to physically-handicapped persons. It is the result of years of research and the advice of experts representing handicapped persons, the building industry, manufacturers, service providers, local governments, and Federal agencies. The Department, if, at some later date, the four agencies authorized by the Architectural Barriers Act of 1968, Public Law 90-480, to prescribe standards for federally funded facilities decides to issue a uniform accessibility standard for the Federal Government, the Department will take appropriate changes in the regulations to incorporate that uniform standard.

Some facilities subject to the ANSI A117.1—1980 standard under these regulations will also be subject to a standard issued by either the General Services Administration (GSA) or the Department of Housing and Urban Development (HUD), two of the four standard-setting agencies under the Architectural Barriers Act of 1968. Both the GSA Accessibility Standard (45 FR 67964 [1980], 41 CFR Part 101—19 [1980]) and the HUD Standard (36 FR 24437 [1971], 24 CFR Part 40) are being revised to conform to the Minimum Guidelines and Requirements for Accessible Design (46 FR 4270 [1981], 36 CFR Part 1190) issued by the Architectural and Transportation Barriers Compliance Board (ATBCB), the agency responsible for enforcing the Architectural Barriers Act of 1968.

Recipients whose facilities are subject to both ANSI A117.1—1980 and these regulations and either the GSA or HUD standard can generally comply with both by following the stricter standard. For example, a facility can be designed with accessible walks having a clearance of 48 inches to meet the ANSI requirements (4.3.3) of a 36 inch minimum clearance and the GSA requirement (4.2.2) of a 48 inch minimum clearance. The Department plans to issue guidelines on how recipients can meet both the standard set by this regulation and the standard required under the Barriers Act. Recipients may depart from particular requirements of A117.1—1980 by adopting different requirements, such as those in the GSA or HUD standards, if equivalent accessibility is provided. In most cases, the Department will consider the requirements of the GSA and HUD standards as providing such equivalent accessibility.

Only a few comments were received on this section and these focused on two areas: Potential loopholes for structural accessibility and possible misinterpretations by recipients covered by the Architectural Barriers Act of 1968 as well as section 504. One commenter was concerned that alterations made accessible and usable only “to the maximum extent feasible,” according to § 15b.19(b), could compromise program accessibility. The Department does not foresee this result since program accessibility must be achieved regardless of the accessibility of building alterations, except in those cases specifically referred to in § 15b.18(c), § 15b.18(d), and Subparts D, E, and F.

One commentator recommended that § 15b.19(c) be revised to require that “equivalent usability” be added to “equivalent access” in determining when deviations from the ANSI Standards shall be permitted. The Department has not made this change but intends to consider usability as well as accessibility, as both criteria are considered in the ANSI Standards.

Another commentator requested that the provision in § 15b.19(c) allowing...
departures from the ANSI Standard where equivalent access is provided be deleted to prevent confusion in situations where a facility is covered by both the Architectural Barriers Act of 1968, as amended, 42 U.S.C. 4151-4157, and section 504. Unlike the requirement of § 15b.19(c), regulations implementing the Architectural Barriers Act of 1968 permit departures from the required standard only after a formal waiver process. Despite this inconsistency, § 15b.19(c) has been retained to provide needed flexibility to recipients whose facilities are covered only by section 504.

A new section, § 15b.19(d), Compliance with the Architectural Barriers Act of 1968,” has been added to remind recipients that compliance with these regulations for program accessibility does not necessarily satisfy their responsibilities under the Architectural Barriers Act of 1968 as enforced by the Architectural and Transportation Barriers Compliance Board.

Subpart D—Preschool, Elementary, Secondary Adult and Extension Education

Two commenters recommended that Subpart D be deleted entirely as inappropriate for the Department of Agriculture’s programs. This has not been done since the Department assists many education programs through grants, construction loans, revenues from national forest receipts, and feeding programs. Many of the recipients operating these programs are also recipients of assistance from the Department of Education. In order to simplify the presentation of efforts of these recipients, the regulations of this subpart incorporate most of the language of the ED section 504 regulations (34 CFR 84.1–84.99 (1980)). The title of this subpart has been revised to include adult and extension education. Adult education is already included in § 15b.20, “Applicability.” Extension education is a major educational program assisted by the Department.

Section 15b.20 Applicability.

A separate reference to recipients has been deleted from this section to maintain consistency with § 15b.2, “Applicability.” See the discussion of that section for an explanation of this change.

Extension education has been added to the list of program areas covered by this subpart.

Section 15b.22 Free appropriate public education.

One commenter recommended that § 15b.22(c)(2) be revised to require a recipient to provide transportation to handicapped persons participating in their programs as is required for handicapped persons placed in programs not operated by recipients. Under § 15b.22(c)(2), a recipient who places a handicapped person in a program which does not operate, must assure that adequate transportation is provided at no greater cost than would be incurred if the handicapped person were placed in the recipient’s program. The purpose of this regulation is to ensure that handicapped persons have equal access to education programs. The regulation does not imply an obligation for a recipient to establish transportation service to its own programs for either handicapped or nonhandicapped persons. However, if the recipient does provide transportation to its programs, that service must be equally accessible, in terms of convenience and cost, to both handicapped and nonhandicapped persons.

Section 15b.22(d) has been deleted as unnecessary. See ED’s commentary to § 84.33(d) of its regulations (34 CFR Part 84, App. A (1980)). A new subparagraph has been added to inform recipients that they must be in compliance with this section by not later than September 1, 1982.

Section 15b.24 Evaluation and placement.

The Department received two comments concerning the title of § 15b.24(a), “Placement evaluation.” The commenters were concerned that the use of “placement” instead of “preplacement” might imply that recipients could conduct evaluations of handicapped persons needing or believing to need special education or related services after an initial tentative placement. The Department does not intend this reading of the regulation and believes that the requirement for an evaluation to be completed before taking any action regarding initial placement or subsequent changes in placement is clear from the text of the subsection.

Section 15b.29 Nonacademic services.

Section 15b.26(d) Food services.

A number of comments suggested that the regulations should make more specific reference to Department programs, including school feeding programs. As a result, § 15b.26(d) has been added to address the most commonly raised issues in school food services.

Section 15b.26(d)(1) requires recipients to serve special meals to handicapped persons whose handicap restricts their diet in such a way that they cannot fully participate in the recipient’s meal program. It is the handicapped person’s responsibility to inform the recipient of the need for special meals. Recipients may require medical certification that special meals are necessary on the basis of handicap, but are not required to do so by these regulations.

In providing special meals, recipients may not charge handicapped persons more than they would be charged for regular meals. For example, a handicapped person eligible for a free lunch could not be required to pay for a special meal.

Depending on the needs of individual handicapped persons, recipients may have to adjust food selections, portions, or methods of preparation. However, recipients are not obligated to establish new feeding programs for handicapped persons. For instance, a recipient operating a lunch program is not required to serve breakfast to handicapped persons.

Section 15b.26(d)(2) concerns the delivery of food services in existing facilities that are not completely accessible and usable. This section should be read in conjunction with § 15b.23(d), “Nonacademic setting,” which requires that handicapped persons participate with nonhandicapped persons in meal services to the maximum extent appropriate to the needs of the handicapped person in question. This means that handicapped persons must be served in the same room or setting as nonhandicapped persons except where the needs of individual handicapped persons dictate that they be served in some other place or manner. Section 15b.26(d)(2) specifies that where serving lines, food dispensers, or furnishings in existing facilities are not completely accessible to and usable by handicapped persons, recipients may use aides, modifications to equipment, or other equally effective measures to provide food services to handicapped persons. The ultimate effect of such methods must be to provide handicapped persons with an opportunity to participate in the program that is equal to the opportunity which is available to nonhandicapped persons.

Section 15b.27 Extension education.

Many commenters advised the Department that Subparts D and E...
directed toward formal educational programs, were inadequate for cooperative extension education, an informal program with voluntary participants of wide-ranging ages and interests. The Department recognizes the special situations involved in the design of extension programs, the selection of delivery sites, and the development of program material, and consequently has added a new § 15b.27 to provide general guidance in these areas. This section is essentially an elaboration of § 15b.18(b) which explains options available to recipients for making programs accessible in existing facilities. Both § 15b.18(b) and § 15b.27 emphasize that program accessibility can often be achieved through methods other than building alterations or new construction and that structural modifications are, in fact, not required when other equally effective methods are available.

The first part of § 15b.27 is a general prohibition against discrimination and a requirement that the needs of qualified handicapped persons be taken into account in planning program activities. This parallels the proposed language for § 15b.27 which was directed toward preschool and adult education programs.

The second part of § 15b.27 discusses the specific accessibility problems of extension programs delivered at extension offices, at other publicly-owned facilities, at privately-owned facilities, and at camps. Where existing offices are inaccessible, program benefits may be delivered through other equally effective methods such as the use of alternate accessible locations, home visits, and written or telephonic communications. The key consideration is that these other methods must be equally effective.

To illustrate, a county agent’s consultation with a mobility-impaired community leader could take place at that community leader’s home or office rather than at the inaccessible office of the agent, provided that the agent’s office was not essential to the consultation. If the community leader were named to an advisory board which regularly met in the agent’s inaccessible office, provision would have to be made for the handicapped board member to participate in all board meetings. This could be accomplished by holding the meetings in other accessible locations, by relocating the county agent’s office to an accessible facility, or by modifying the office. It would not be equally effective in this case for the county agent to meet individually with the handicapped board member since an important aspect of the program is the interaction of the board members. Where extension programs are delivered at publicly-owned facilities other than at recipient offices, these facilities must be accessible wherever possible. It is recognized that settings such as natural terrain cannot always be made accessible to handicapped persons. In these cases, recipients must use alternative effective methods to deliver the program benefits to qualified handicapped persons. These methods include redesigning the activity or some sessions of the activity. For example, recipients may continue to schedule nature walks in an undeveloped park, making accommodations for persons with visual, hearing, and limited mobility impairments, but would also have to arrange sessions in which comparable information is available to persons with severe mobility impairments through the use of lectures, visual aids, exhibits or other suitable techniques. Such alternate sessions cannot be limited only to handicapped persons.

Many extension activities take place in privately-owned delivery facilities which are often inaccessible. Such activities may continue in these facilities unless a handicapped person requiring accessibility is participating, has expressed an interest in participating, or is likely to participate. Thus, when a qualified handicapped person applies to join a homemakers group, the group must arrange to hold its meetings in an accessible place. Also, any of the group’s activities which are open to the public and for which the accessibility requirements of those attending cannot be determined in advance will have to be conducted in accessible locations. Recipients should be aware that the Department intends to follow the HEW policy prohibiting the carrying of handicapped persons except as a temporary expedient when program accessibility can only be achieved through structural changes and in manifestly exceptional circumstances under controlled conditions (43 FR 30033, 30033 (1976)).

Camping programs, like other extension programs, must be accessible to qualified handicapped persons. This does not mean that every existing camp must be accessible but that the recipient’s program as a whole must be accessible. If the camp that a handicapped person would normally attend is inaccessible, the recipient may assign that person to another accessible camp which it operates. In all camping activities, qualified handicapped persons must participate with nonhandicapped persons to the extent appropriate to the needs of individual handicapped persons. Therefore, the recipient cannot limit qualified handicapped persons or any class of handicapped persons to one camp or camping session.

The third and final part of § 15b.27 requires that program materials be accessible to qualified handicapped persons with sensory or mental impairments. One commenter asked if all written materials provided through the extension education program would have to be put on tape. This is not the intent of the regulations. Accessibility to written materials can be achieved by having available Braille or taped copies of the most commonly-requested publications and by providing other materials in alternate forms upon request. Volunteer services can frequently be obtained for Brailing, typing, and other accommodations for persons with impaired vision or hearing.

For persons with mental impairments, simplified versions of program materials may be necessary.

Section 15b.20 - Private education programs.

Several comments were submitted regarding the requirement that private schools operating special education programs adopt the guidelines for evaluation, placement and procedural safeguards outlined in §§ 15b.24 and 15b.25. The commenters felt that these guidelines, developed by ED primarily for public elementary and secondary schools, were too burdensome for private schools, most of whom participate only in the Department’s school feeding programs.

The Department has examined this issue carefully and has noted the differences that exist between public and private schools in regard to student bodies, curriculums, educational innovations, teaching staffs, administration, and financial resources. Additionally, the Department has considered the protections against discrimination that exist in Subpart A. including the grievance procedure which must be established by most recipients. On the basis of these factors, the Department has revised § 15b.28 to make only §§ 15b.22(b)(1)(ii), 15b.23, and 15b.26 applicable to private schools. The effect of these sections is to require private schools to provide qualified handicapped students an appropriate education, in an integrated setting for both academic and nonacademic activities. Private school recipients will not be held to the technical requirements for special education in
§ 15b.24 and 15b.25. However, such recipients who operate special education programs may not discriminate against qualified handicapped persons in the administration of their special education programs.

Subpart E—Postsecondary Education

Few comments were received on this section and no significant changes have been made. Two commenters recommended that the subpart be deleted as inappropriate for the Department's programs. This has not been done since the Department assists many postsecondary education programs, including postsecondary vocational education programs, through grants to support education programs, grants and cooperative agreements to support research, and construction loans. Many of the recipients operating these programs are also recipients of assistance from the Department of Education. In order to simplify the compliance efforts of these recipients, the regulations of this subpart incorporate most of the language of the ED section 504 regulations (34 CFR 64.1-64.95 (1990)).

Section 15b.29 Applicability.

A separate reference to recipients has been deleted from this section to maintain consistency with § 15b.2, "Applicability." See the discussion of that section for an explanation of this modification.

Section 15b.30 Admissions and recruitment.

One commenter suggested that when recipients make predidmission inquiries, § 15b.30(c), they be required to make clear to the applicant, as opposed to merely stating clearly, the limitations on the recipient's request for information on the applicant's handicapped status. The Department believes that the conditions set out in § 15b.30(c) provide adequate and enforceable protections for handicapped applicants.

Section 15b.31 Treatment of students; general.

Section 15b.31(c) has been revised to include "course" in addition to "course of study" among the aspects of a recipient's education program or activity from which a qualified handicapped person may not be excluded. This language was inadvertently omitted from the Department's proposed regulations.

Section 15b.32 Academic adjustments.

One commenter recommended that § 15b.32(d)(2) be amended to explicitly require recipients to provide interpreters to hearing-impaired students when materials are delivered orally. This would enable hearing-impaired students to understand the lecture and participate in any discussion. The recommended amendment has not been adopted since not all orally-delivered information involves discussion.

Section 15b.41 Multi-family rental housing.

A new § 15b.41, "Multi-family rental housing," has been added to this subpart in response to the particular accessibility issues associated with this program. Issues not addressed in this section are, of course, covered by Subparts A, B, and C.

Section 15b.41(a) is a general prohibition of discrimination on the basis of handicap against qualified handicapped persons as defined in Subpart A.

Section 15b.41(b) outlines general requirements for making new multi-family rental housing projects structurally accessible to qualified handicapped persons. These requirements apply only to recipients that have entered into an agreement of assistance with the Department after the effective date of the regulations.

In setting these limits, the Department considered carefully the number of multi-family rental housing projects assisted between the effective dates of section 504 and these regulations, the housing needs of handicapped persons, the costs involved in retrofitting existing housing projects and the number of projects already covered by other accessibility standards. The Department concluded that application of the accessibility requirements of this section to existing projects could not be justified in light of previous agreements between the Department and recipients and would likely result in recipients assuming additional debt that would be passed on to tenants in the form of higher rents. Additionally, the Department determined that many existing multi-family housing projects are already at least minimally accessible due to standards prescribed by other regulations. A new subsection (c), discussed below, has been added to clarify program accessibility requirements for existing facilities.

The Department will consider adaptable as well as fully accessible units as meeting the requirements of this section. An adaptable unit is one which is basically accessible in terms of entry and circulation and which has been constructed to permit recipients to easily install grab bars, modify kitchen facilities, and make other standard adaptations at the time that a handicapped person needing these adaptations would rent the unit. In contrast, an accessible unit would be constructed with all accessibility features in place. One advantage of adaptable units is that they can be more easily rented to nonhandicapped person.
Another is that handicapped persons will be able to have installed only those accessibility features which they need and in the positions which will be most helpful to them.

The minimum number of accessible or adaptable units per housing project has been set at five percent or at least one unit, whichever is greater. This measure of accessibility is based on available data on the number of handicapped persons needing such housing nationwide, and the fact that many rental housing projects assisted by the Department have fewer than 20 units.

Because many of these housing programs are located in small rural communities where populations may differ from national averages, some flexibility has been built into the accessibility requirement by allowing a different percentage of accessible units where a market survey approved by the Department indicates that this would be more appropriate for a particular program and its service area.

As for the rental housing units themselves, they must be comparable in variety to other units in the project, must be rented at the same rates as other comparable units, and cannot be clustered at one site if the program encompasses more than one site. This means, for example, that a multi-family housing program consisting of 40 units, 20 each at two sites and divided equally between one and two-bedroom units, would have at least two accessible or adaptable units, one at each site, and one of the one and two-bedroom styles.

Section 15b.41(c) outlines general requirements for making existing multi-family rental housing projects accessible to qualified handicapped persons. These requirements apply only to recipients that have entered into an agreement of assistance with the Department prior to the effective date of the regulations. In such situations, recipients must assure program accessibility in their projects. See § 15b.18 of the regulations and the appropriate part of this "Supplementary Information" for a discussion of program accessibility requirements. Efforts to provide program accessibility in existing facilities should begin when a qualified handicapped person applies for admission. Physical alterations to existing facilities to make them accessible must be completed within a reasonable amount of time after the unit becomes available for occupancy. Under normal circumstances, it is expected that the unit will be altered to meet accessibility requirements within 30 days of the time the unit becomes ready for occupancy.

The section also contains information on how the Department will help recipients to comply with program accessibility requirements. In general, the Department will consider applications by the recipient for subsequent loans to make existing facilities accessible or to construct additional accessible units. The Department will also consider requests to use the housing project's reserve fund account for making minor modifications to existing facilities in order to make them accessible.

Subpart G—Procedures

No substantive changes have been made to this subpart.

List of Subjects in 7 CFR Part 15b

Administrative practice and procedure, Civil rights, Handicapped.

For the reasons given above, Part 15b is added to Title 7 of the Code of Federal Regulations as set forth below.

Dated: June 3, 1982.

John R. Block, Secretary.

Title 7 of the Code of Federal Regulations is amended by adding a new Part 15b as follows:

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

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Appendix A—List of USDA-Assisted Programs.


Subpart A—General Provisions

§ 15b.1 Purpose.

The purpose of this part is to implement section 504 of the Rehabilitation Act of 1973, as amended, to the end that no otherwise qualified handicapped individual in the United States shall solely by reason of his or her handicap be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

§ 15b.2 Applicability.

This part applies to all programs and activities that receive or benefit from Federal financial assistance extended by the Department of Agriculture after the effective date of this part whether or not the assistance was approved after the effective date. Subparts A, B, and C are of general applicability. Subparts D, E, and F are tailored to specific programs. Subpart G is procedural.
§ 15b.3 Definitions.

As used in this part, the term or phrase:


(b) "Section 504" means section 504 of the Act, 29 U.S.C. 794.


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

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

(f) "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 which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) "Federal financial assistance" or "assistance" means any grant, contract (other than a procurement contract or a contract of insurance or guaranty), cooperative agreement, formula allocation, loan, or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel;

(3) Real and personal Federal property or any interest in Federal property, including:

(I) A sale, transfer, lease or use (on other than a casual or transient basis) of Federal property for less than fair market value, for reduced consideration or in recognition of the public nature of the recipient's program or activity; and

(ii) Proceeds from a subsequent sale, transfer or lease of Federal property if the Federal property's fair market value is not returned to the Federal Government.

(h) "Any other thing of value.

(i) "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.

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

(k) "Physical or mental impairment" means (1) 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 (2) 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 impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; mental retardation; emotional illness; and drug addiction and alcoholism.

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

(m) "Is regarded as having an impairment" means (1) 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; (2) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others towards such impairments, or (3) has none of the impairments defined in paragraph (j) of this section but is treated by a recipient as having such an impairment.

(n) "Qualified handicapped person" (used synonymously with "otherwise qualified handicapped individual") means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question, but the term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

(2) With respect to public preschool, elementary, secondary, or adult educational services, a handicapped person, (i) of an age during which non-handicapped persons are provided such services, (ii) of an 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 all academic and technical standards 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 receipt of such services.

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

(p) For purposes of § 15b.18(d), "Historic preservation programs" means programs receiving Federal financial assistance that has preservation of historic properties as a primary purpose.

(q) For purposes of § 15b.18(d), "Historic properties" means those properties that are listed or eligible for listing in the National Register of Historic Places.

(r) For purposes of § 15b.18(d), "Substantial impairment" means a significant loss of the integrity of finished materials, design quality or special character which loss results from a permanent alteration.

§ 15b.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 receiving assistance from this Department.

(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 services:

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

(iii) Provide a qualified handicapped person with an aid, benefit or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit or to reach the same level of achievement in the most integrated setting appropriate as that provided to others;

(iv) Provide a different or separate aid, benefit or service to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with an aid, benefit or service 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 committees;

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any rights, privileges, advantages, or opportunities enjoyed by others receiving an aid, benefit or service.

(2) 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, in the 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 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, by denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance or (ii) that have the purpose or effect of destroying or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, an 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. 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.

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

§ 15b.5 Assurances 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 conducted 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.

(c) Covenants. (1) Where Federal financial assistance is provided in the form of real property or an interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for the purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (c)(1) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or an interest in the property from the Department, the instrument shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, 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.
§ 15b.6 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 standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

(c) The Secretary may require any recipient with fewer than fifteen employees to designate a responsible employee and adopt grievance procedures when the Secretary finds a violation of this part or finds that complying with these administrative requirements will not significantly impair the ability of the recipient to provide benefits or services.

§ 15b.7 Notice of nondiscrimination and accessible services.

(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 and 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 recipient shall also identify the responsible employee designated pursuant to § 15b.6(a), and identify the existence and location of accessible services, activities, and facilities. 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, placement of notices in the recipient’s publications, radio announcements, and the use of other visual and aural media.

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

§ 15b.8 Remedial action, voluntary action, and self-evaluation.

(a) Remedial action. (1) If the Secretary finds that a recipient has discriminated against any person on the basis of handicap in violation of Section 504 or 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 or this part and where another recipient exercises control over the recipient that has discriminated, the Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participating in the recipient’s program but who were participants in the program when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred, or (iii) with respect to handicapped persons presently in the program, but not receiving full benefits or equal and integrated treatment within the program.

(b) Voluntary action. A recipient may take steps, in addition to any 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 persons 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.

(ii) 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 remedial steps made and of any remedial steps taken.

§ 15b.9 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.

§ 15b.10 Effect of compliance with regulations or other Federal agencies.

A recipient that has designated a responsible official and established a grievance procedure, provided notice, completed a self-evaluation, or prepared a transition plan in the course of complying with regulations issued by other Federal agencies under section 504 will be in compliance with § 15b.6, 15b.7, 15b.8(c), or 15b.18(f), respectively, if all requirements of those sections have been met in regard to programs assisted by this Department.

Subpart B—Employment Practices

§ 15b.11 Applicability.

This subpart applies to all programs and activities that receive or benefit from Federal financial assistance provided by the Department of Agriculture after the effective date of this part.

§ 15b.12 Discrimination prohibited.

(a) General. (1) No qualified handicapped person shall, on the basis
of handicapped, be subjected to discrimination in employment under any program or activity receiving assistance from this Department.

(2) A recipient shall make all decisions concerning employment in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(3) 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 organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(4) All provisions of this subpart pertaining to employment, apply equally to volunteer service.

(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 leaves of absence to pursue training;
(8) Employer sponsored activities, including social or recreational programs; and
(9) Any other term, 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.13 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 programs, factors to be considered include:

(1) The overall size of the recipient’s program with respect to number of employees, number and type of facilities, and size of budget;
(2) The type of the recipient’s operation, including the composition and structure of recipient’s workforce;
(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.14 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 recipient shows that the test score or other selection criterion, as used by the recipient, is job-related for the position in question, and

(2) The Secretary cannot show that alternative job-related tests or criteria are available that do not screen out or tend to screen out as many handicapped persons.

(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, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 15b.15 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 perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 15b.8(a), 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.8(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 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 for 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 the same 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 accommodations;

(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.10 Applicability.
This subpart applies to all programs and activities that receive or benefit from Federal financial assistance provided by the Department of Agriculture after the effective date of this part.

§ 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, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving assistance from this Department.

§ 15b.18 Existing facilities.
(a) Program accessibility. A recipient shall operate each assisted program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by qualified handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing facilities or every part of an existing facility accessible to and usable by qualified handicapped persons.

(b) Method. A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes, reassignment of services to accessible buildings, assignment of aids to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of § 15b.19, or any other method that results in making its program or activity accessible to qualified handicapped persons. A recipient 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 requirements of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate to obtain the full benefits of the program.

(c) Small providers. If a recipient with fewer than fifteen employees 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 by 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 accessible at no additional cost to handicapped persons.

(d) Application for modification of requirements. Recipients that determine after a self-evaluation conducted according to the requirements of § 15b.8(c), that program accessibility can only be accomplished through substantial modifications which would result in a fundamental alteration in the nature of the program, may apply to the Secretary for a modification of the requirements of this section.

(e) Historic preservation programs. Application for waiver of program accessibility requirements. (1) In the case of historic preservation programs, program accessibility means that, when viewed in its entirety, a program is readily accessible to and usable by handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing historic properties or every part of an historic property accessible to and usable by handicapped persons. Methods of achieving program accessibility include:
(i) Making physical alterations which enable handicapped persons to have access to otherwise inaccessible areas or features of historic properties;
(ii) Using audio-visual materials and devices to depict otherwise inaccessible areas or features of historic properties;
(iii) Assigning persons to guide handicapped persons into or through otherwise inaccessible portions of historic properties;
(iv) Adopting other innovative methods to achieve program accessibility. Because the primary benefit of an historic preservation program is the experience of the historic property itself, in taking steps to achieve program accessibility, recipients shall give priority to those means which make the historic property, or portions thereof, physically accessible to handicapped individuals.

(2) Where program accessibility cannot be achieved without causing a substantial impairment of significant historic features, the Secretary may grant a waiver of the program accessibility requirement. In determining whether program accessibility can be achieved without causing a substantial impairment, the Secretary shall consider the following factors:
(i) Scale of property, reflecting its ability to absorb alterations;
(ii) Use of the property, whether primarily for public or private purpose;
(iii) Importance of the historic features of the property to the conduct of the program; and
(iv) Cost of alterations in comparison to the increase in accessibility.

The Secretary shall periodically review any waiver granted under this section and may withdraw it if technological advances or other changes so warrant.

(3) Where the property is federally owned or where Federal funds may be used for alterations, the comments of the Advisory Council on Historic Preservation shall be obtained when required by section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), and 36 CFR Part 900, prior to effectuation of structural alterations.

(f) Time period. A recipient shall comply with the requirements of paragraph (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 and as expeditiously as possible.

(g) Transition plan. In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within one year 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 handicapped 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 accessibility 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 transition period; and
(4) Identify the person responsible for implementation of the plan.

§ 15b.19 New construction.
(a) Design and construction. Each facility or part of a facility constructed 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 construction is 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 after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall to the maximum extent feasible, be altered 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 Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute Inc. (ANSI A117.1-1980), 1430 Broadway, New York, N.Y. 10018, which is incorporated by reference into this part, shall constitute 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 thereby provided.

(d) Compliance with the Architectural Barriers Act of 1968. Nothing in this section of § 15b.18 relieves recipients, whose facilities are covered by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157) from their responsibility of complying with the requirements of that Act and any implementing regulations.

Subpart D—Preschool, Elementary, Secondary, Adult, and Extension Education

§ 15b.20 Applicability.

Except as otherwise noted, this subpart applies to public and private schools, elementary, secondary, adult, and extension education programs and activities that receive or benefit from Federal financial assistance provided by the Department of Agriculture after the effective date of this part to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§ 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 residing in the recipient’s jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents 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 a free appropriate public education to each qualified handicapped person who is in the recipient’s jurisdiction, regardless 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 education 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 standard established in paragraph (b)(1)(i) 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 requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) Free education. (1) General. For the purpose of this section, the provision of a free education is the provision of educational and related services 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 requirements of this subpart, payment for 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 a handicapped person in or refers such person 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 person or his or her parents or guardian if the person 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 a handicapped person because of their handicap, the program, including nonmedical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) Placement of handicapped persons by parents. If a recipient has made available in conformance with the requirements of this section and § 15b.23, a free appropriate public education to a handicapped person and the person’s parents or guardian choose 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 § 15b.25.

(d) Compliance. A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this regulation. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time but in no event later than September 1, 1982.

§ 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.28(a)(2), a recipient shall ensure that handicapped persons participate with 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 identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, 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 of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement.

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

(c) 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 conditions, social or cultural background, and adaptive behavior. (2) 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 (4) ensure that the placement decision is made in conformity with § 15b.23.

(d) Reevaluation. 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 action regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction 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) Recipients to which this subpart applies shall provide nonacademic and extracurricular services and activities in such a 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 education and athletics, food services, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipient, referrals to agencies which provide assistance to handicapped persons, and assistance in obtaining outside employment.

(b) Counseling 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. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) 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 interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with requirements of § 15b.23, and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(d) Food services. In providing food services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap.

(1) Recipients shall serve special meals, at no extra charge, to students whose handicap restricts their diet. Recipients may require students to provide medical certification that special meals are needed because of their handicap.
(2) Where existing food service facilities are not completely accessible and usable, recipients may provide aids or use other equally effective methods to serve food to handicapped persons. Recipients shall provide all food services in the most integrated setting appropriate to the needs of handicapped persons as required by § 15b.23(b).

§ 15b.27 Extension education.

(a) General. A recipient to which this subpart applies that operates an extension education program or activity receiving assistance from this Department may not, on the basis of handicap, exclude qualified handicapped persons from the program or activity. A recipient shall take into account the needs of such persons in determining the benefits or services to be provided under the program or activity.

(b) Program delivery sites. (1) Where existing extension office facilities are inaccessible, recipients may make program services normally provided at those sites available to qualified handicapped persons through other methods which are equally effective. These methods may include meetings in accessible locations, home visits, written or telephonic communications, and other equally effective alternatives.

(2) For program services delivered at other publicly-owned facilities, recipients shall select accessible facilities wherever possible. If accessible facilities cannot be selected because they are unavailable or infeasible due to the nature of the activity, recipients shall use other methods to deliver program benefits to qualified handicapped persons. These methods may include the redesign of activities or some sessions of activities, the provision of aides, home visits, or other equally effective alternatives.

(3) For program services delivered at privately-owned facilities, such as homes and farm buildings, recipients shall use accessible facilities whenever qualified handicapped persons requiring such accessibility are participating, have expressed an interest in participating, or are likely to participate. If accessible facilities cannot be selected because they are unavailable or infeasible due to the nature of the activity, recipients shall use other methods to deliver program benefits to qualified handicapped persons. These methods may include the redesign of activities or some sessions of activities, the provision of aides, home visits, or other equally effective alternatives.

(4) Recipients shall make camping activities accessible to qualified handicapped persons. Recipients are not required to make every existing camp, all existing camp facilities, or all camp sessions accessible, but recipients who operate more than one camp or session may not limit qualified handicapped persons to one camp or session.

(c) Program materials. Recipients shall make program materials accessible to qualified handicapped persons with sensory or mental impairments. Commonly-used materials shall be readily available in alternative forms such as Braille or tape. Upon request, recipients shall make other materials available through appropriate means such as Braille, tape, readers, large print formats, simplified versions, written scripts, or interpreters. Recipients need not provide individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

§ 15b.28 Private education programs.

(a) A recipient that operates a private elementary or secondary education program receiving assistance from this Department may not, on the basis of handicap, exclude a qualified handicapped person from such program if the person can, with minor adjustments, be provided an appropriate education, as defined by § 15b.22(b)(1)(i). Each recipient to which this section applies is also subject to the provisions of § 15b.23 and § 15b.28.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

Subpart E—Postsecondary Education

§ 15b.29 Applicability.

Subpart E applies to public and private postsecondary education programs and activities, including postsecondary vocational education programs and activities, that receive or benefit from Federal financial assistance provided by the Department of Agriculture after the effective date of this part.

§ 15b.30 Admissions and recruitment.

(a) General. Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) Admissions. In administering its admission policies, a recipient to which this subpart 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 on handicapped persons or any class of 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 or 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 take 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.8(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.8(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 in accordance with this part.

(d) Validity studies. For the purpose of paragraph (b)(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 to monitor the general validity of the test scores.

§ 15b.31 Treatment of students.

(a) General. 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, athletics, recreation, transportation, other extracurricular, other secondary education program or activity to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, an education program or activity operated 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 subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program or instruction being pursued by such student or applicant directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes 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 other 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 course 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 handicaps that impair sensory, manual, or speaking skills as will best ensure that the results of the evaluation represent the students' achievements in the course, rather than reflecting the students' 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, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of 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 for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

§ 15b.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 or instruction being pursued by such student or applicant directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes 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 other 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 course 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 handicaps that impair sensory, manual, or speaking skills as will best ensure that the results of the evaluation represent the students' achievements in the course, rather than reflecting the students' 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, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of 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 for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

§ 15b.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, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodations 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.

§ 15b.34 Financial and employment assistance to students.

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

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) Assistance in making available outside employment. A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate Subpart B if they were provided by the recipient.

(c) Employment of students by recipients. A recipient that employs any of its students may not do so in a manner that violates Subpart B.

§ 15b.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.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of § 15b.31(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(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 those services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) Social organizations. A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

Subpart F—Other Programs and Activities

§ 15b.36 Applicability.

Subpart F applies to programs and activities, other than those covered by Subparts D and E, that receive or benefit from Federal financial assistance provided by the Department of Agriculture after the effective date of this part.

§ 15b.37 Auxiliary aids.

(a) 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.

(b) 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.

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

§ 15b.39 Health care facilities.

(a) Communications. 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.

(b) 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.

(c) 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 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.31(n)(2), 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.

§ 15b.40 Food services.

(a) Recipients which operate food service programs assisted by this Department shall serve special meals, at no extra charge, to persons whose handicap restricts their diet. Recipients may require handicapped persons to provide medical certification that special meals are needed because of their handicap.

(b) Where existing food service facilities are not completely accessible and usable, recipients may provide aids or use other equally effective methods to serve food to handicapped persons. Recipients shall provide all food services in the most integrated setting appropriate to the needs of handicapped persons.

§ 15b.41 Multi-family rental housing.

(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 in a multi-family rental housing program.

(b) New construction. (1) Recipients receiving assistance from the Department for multi-family rental housing projects constructed after the effective date of this part shall construct at least five percent of the units in the project or one unit, whichever is greater, to be accessible to or adaptable for physically handicapped persons. The requirement that five percent of the units in the project or at least one unit, whichever is greater, be accessible or adaptable may be modified if a recipient shows, through a market survey approved by the Department, that a different percentage of accessible or adaptable units is appropriate for a particular project and its service area.

(ii) The variety of units accessible to or adaptable for physically handicapped persons shall be comparable to the variety of units available in the project as a whole.

(iii) No extra charge may be made for use of accessible or adaptable units.

(iii) A recipient that operates multi-family rental housing projects on more than one site may not locate all accessible or adaptable units at one site unless only one accessible or adaptable unit is required.

(2) Standards for accessibility are contained in Subpart C and inappropriate program regulations.

(c) Existing facilities. Recipients receiving assistance from the Department for multi-family rental housing projects constructed prior to the effective date of this part shall assure that their facilities comply with the program accessibility requirements established in Section 15b.18 if a qualified handicapped person applies for admission. Necessary physical alterations made pursuant to such requirements shall be completed within a reasonable amount of time after the unit becomes available for occupancy by the qualified handicapped person. Subject to the availability of funds and fulfillment by the recipient of all program eligibility requirements, the Department may assist recipients to comply with program accessibility requirements through methods such as(1) consideration of subsequent loan applications for purposes of making
existing facilities accessible or for the construction of additional units which are accessible and (2) consideration of approval to commit project reserve account funds for minor modifications in order to make existing facilities accessible.

**Subpart G—Procedures**

§ 15b.42—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 15.60-15.143.

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<th>Program</th>
<th>Authority</th>
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<tr>
<td>2. Federal-State marketing improvement program</td>
<td>Sec. 204(b) of the Agricultural Marketing Act of 1946, 7 U.S.C. 1623(b).</td>
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<tr>
<td>5. Price support programs operating through producer associations, cooperatives, and other recipients in which the recipient is required to furnish specified benefits to producers (e.g., tobacco, peanuts, sugar, cotton, rice, honey and soybeans price support programs).</td>
<td>Sec. 407 of the Agricultural Act of 1949, as amended, 7 U.S.C. 1421-1447.</td>
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**Appendix A—List of USDA-Assisted Programs**

- Programs administered by the U.S. Department of Agriculture in which Federal financial assistance is rendered, include but are not limited to the following:

  18. Farm ownership loans to install or improve recreational facilities or other nonprofit enterprises. |
  19. Operating loans to install or improve recreational facilities or other nonprofit enterprises. |
  20. Soil and water conservation, including pollution abatement facilities, and recreational facilities. |
  21. Financial and other assistance to landowners, operators, or occupiers to carry out land use, water conservation, or resource conservation development, land conservation, and utilization. |
  22. Watershed protection and flood prevention program. |
  23. Resource conservation and development loans. |
  24. Farm labor housing loans. |
  25. Rural cooperative housing. |
  26. Rural housing site loans. |
  27. Technical and supervisory assistance grants. |
  29. Water and waste facility loans and grants and community facility loans and grants. |
  30. Rural and industrial loan program. |
  31. Private business enterprise grants. |
  32. Area development assistance planning program. |
  33. Energy-impaired areas development assistance program.
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<th>Program</th>
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<td>Administered by the Food and Nutrition Service</td>
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<tr>
<td>40. Food stamp program</td>
<td>Food Stamp Act of 1964, as amended, 7 U.S.C. 2011-2027</td>
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<td>46. Special milk program</td>
<td>Secs. 5 of the National School Lunch Act, as amended, 42 U.S.C. 1774.</td>
</tr>
<tr>
<td>47. Food service equipment assistance</td>
<td>Secs. 18 and 19 of the Child Nutrition Act of 1965, 42 U.S.C. 1781 et seq.</td>
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<tr>
<td>Administered by the Food Safety and Inspection Service</td>
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<td>51. Payments to States for the inspection of egg handlers to insure that</td>
<td>Egg Products Inspection Act, 21 U.S.C. 1031-1058.</td>
</tr>
<tr>
<td>they are properly disposing of suspect eggs</td>
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<tr>
<td>53. Financial and technical assistance to States for poultry inspection</td>
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<td>activities</td>
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<tr>
<td>54. Financial and technical assistance to States for meat and poultry</td>
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<td>inspection activities</td>
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<td>other than individuals at a nominal or no charge.</td>
<td>Sec. 7 of the Granger-Theye Act of April 24, 1950, 16 U.S.C. 559a.</td>
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<td>individuals at a nominal charge.</td>
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<tr>
<td>57. Permits for disposal of common vessels of mineral materials from</td>
<td>Sec. 32 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1011;</td>
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<tr>
<td>individuals at a nominal or no charge.</td>
<td>Sec. 501 of the Act of March 3, 1899, 16 U.S.C. 528.</td>
</tr>
<tr>
<td>59. Easements for road rights-of-way over lands administered by the</td>
<td>Sec. 1 of the Act of June 4, 1897, as amended, 16 U.S.C. 551; Sec. 32 of</td>
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<tr>
<td>Forest Service</td>
<td>the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1011.</td>
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<td>60. Road rights-of-way for wagon roads or railroads</td>
<td>Sec. 5 of the Act of June 20, 1959, 16 U.S.C. 565b.</td>
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<tr>
<td>States political subdivisions</td>
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<td>schools and hospitals</td>
<td>Sec. 33 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1012.</td>
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<tr>
<td>67. Grants to support scientific research</td>
<td>Sec. 92(b) of Title IX of the Older Americans Amendments of 1975, 42 U.S.C.</td>
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<td>68. Research cooperation</td>
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<td>69. Youth conservation corps State grant program</td>
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<td>70. Young adult conservation corps State grant program</td>
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<td>71. Grants to Maine, Vermont, and New Hampshire for the purpose of</td>
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<td>assisting economically disadvantaged citizens over 55 years of age</td>
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<td>72. Senior community service employment program (303-C13)</td>
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<td>74. CATV, community facilities program</td>
<td>Secs. 503 and 510 of the Consolidated Rural and Development Act of 1979, 7 U.S.C. 1526, 1532.</td>
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<td>Administered by the Soil Conservation Service</td>
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<tr>
<td>76. Soil and water conservation</td>
<td>Secs. 1-6 and 17 of the Soil Conservation and Domestic Allotment Act, as amended, 16 U.S.C. 5903-5904, 590d.</td>
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<td>Program</td>
<td>Authority</td>
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<tr>
<td>83. Soil survey</td>
<td>Secs. 1-6 and 17 of the Soil Conservation and Domestic Allotment Act, as amended, 16 U.S.C. 590a-590i, 590q</td>
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<tr>
<td>84. River basin surveys and investigations</td>
<td>Sec. 6 of the Watershed Protection and Flood Prevention Act, 16 U.S.C. 1006.</td>
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<tr>
<td>85. Snow survey and water supply forecasting</td>
<td>Secs. 1-6 and 17 of the Soil Conservation and Domestic Allotment Act, as amended, 16 U.S.C. 590a-590i, 590q</td>
</tr>
<tr>
<td>86. Land inventory and monitoring</td>
<td>Secs. 1-6 and 17 of the Soil Conservation and Domestic Allotment Act, as amended, 16 U.S.C. 590a-590i, 590q</td>
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<tr>
<td>89. Rural abandoned mine program</td>
<td>Sec. 10 of the Act of December 22, 1944, 50 Stat. 905.</td>
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Administered by the Office of Transportation