in the research will have no effect on his or her parole; and

(7) Where the Board finds there may be a need for follow-up examination or care of participants after the end of their participation, adequate provision has been made for such examination or care, taking into account the varying lengths of individual prisoners' sentences, and for informing participants of this fact.

(b) The Board shall carry out such other duties as may be assigned by the Secretary.

(c) The institution shall certify to the Secretary, in such form and manner as the Secretary may require, that the duties of the Board under this section have been fulfilled.

§ 46.306 Permitted research involving prisoners.

(a) Biomedical or behavioral research conducted or supported by DHEW may involve prisoners as subjects only if:

(1) The institution responsible for the conduct of the research has certified to the Secretary that the Institutional Review Board has approved the research under § 46.305 of this subpart; and

(2) In the judgment of the Secretary the proposed research involves solely the following:

(A) Study of the possible causes, effects, and processes of incarceration, and of criminal behavior, provided that the study presents no more than minimal risk and no more than inconvenience to the subjects;

(B) Study of prisons as institutional structures or of prisoners as incarcerated persons, provided that the study presents no more than minimal risk and no more than inconvenience to the subjects;

(C) Research on conditions particularly affecting prisoners as a class (for example, vaccine trials and other research on hepatitis which is much more prevalent in prisons than elsewhere; and research on social and psychological problems such as alcoholism, drug addiction and sexual assaults) provided that the study may proceed only after the Secretary has consulted with appropriate experts including experts in penology medicine and ethics, and published notice, in the FEDERAL REGISTER, of his intent to approve such research; or

(D) Research on practices, both innovative and accepted, which have the intent and reasonable probability of improving the health or well-being of the subject. In cases in which those studies require the assignment of prisoners in a manner consistent with protocols approved by the IRB to control groups which may not benefit from the research, the study may proceed only after the Secretary has consulted with appropriate experts, including experts in penology medicine and ethics, and published notice, in the FEDERAL REGISTER, of his intent to approve such research.

(b) Except as provided in paragraph (a) of this section, biomedical or behavioral research conducted or supported by DHEW shall not involve prisoners as subjects.

[FR Doc. 78-32050 Filed 11-15-78; 8:45 am]

federal register

THURSDAY, NOVEMBER 16, 1978

PART V

DEPARTMENT OF ENERGY

NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Proposed Rule

[3128-01-M]

DEPARTMENT OF ENERGY

[10 CFR Part 1040]

NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Proposed Rulemaking

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: Under various statutes, the Department of Energy is responsible for implementing compliance with and enforcement of public laws prohibiting discrimination because of race, color, national origin, sex, handicap, and age in programs and activities receiving Federal assistance from the Department of Energy. This regulation, which applies to all recipients of Federal assistance from the Department of Energy, is intended to insure that departmental federally assisted programs are operated without discrimination against potential beneficiaries, beneficiaries, and qualified handicapped persons. As employers, where employment is covered by this regulation and as providers of services, recipients are required to operate their programs in a nondiscriminatory manner consistent with this regulation.

DATES: Comments must be received on or before December 19, 1978.

ADDRESSES: Comments should be addressed to Carlos Ruiz, Office of Equal Opportunity, Department of Energy, Room 6105, 20 Massachusetts Avenue NW., Washington, D.C. 20545.

FOR FURTHER INFORMATION CONTACT:

Carlos Ruiz, Director, Federally Assisted Programs Division, Office of Equal Opportunity, Room 6105, 20 Massachusetts Avenue NW., Washington, D.C. 20545, 202-376-1923.

Marsha A. Robinson, Equal Opportunity Specialist, Office of Equal Opportunity, Room 6105, 20 Massachusetts Avenue NW., Washington, D.C. 20545, 202-376-1891.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565, 42 U.S.C. 7101 et seq., transferred to DOE the functions of the Energy Research and Development Administration (ERDA), which had responsibility for long-term energy research and development, the Federal Energy Administration (FEA), with the task of developing the Nation's energy policy and allocating its energy supply, the Federal Power Commission (FPC), whose responsibilities were in the area of ratemaking for gas and electric power, as well as energy-related functions of various other Federal agencies and departments.

Although several of the DOE predecessor agencies and incoming components of other agencies were extending Federal assistance in the form of grants, loans, and contracts, none of those entities had issued appropriate regulations implementing Federal statutes which prohibit discrimination in federally assisted programs. The Department of Energy, in accordance with applicable laws, is issuing a proposed regulation to implement Federal statutes which prohibit discrimination in programs and activities receiving Federal assistance from DOE.

II. Overview of Proposed Regulation

The proposed DOE regulation is comprehensive in nature and encompasses the following laws pertaining to nondiscrimination in federally assisted programs: Title VI of the Civil Rights Act of 1964 prohibits discrimination on the ground of race, color, and national origin; section 16 of the Federal Energy Administration Act of 1974, as amended, and section 401 of the Energy Reorganization Act of 1974 prohibit discrimination on the ground of sex; Title VIII of the Civil Rights Act of 1968, as amended, prohibits discrimination on the ground of race, color, religion, national origin, or sex in the sale or leasing of all federally assisted housing; Title IX of the Education Amendments of 1972, as amended, prohibits discrimination on the basis of sex in any education program or activity receiving Federal assistance; section 504 of the Rehabilitation Act of 1973, as amended, provides that no otherwise qualified handicapped individual shall, solely by reason of his/her handicap, be denied the benefits of, be excluded from the participation in, or be subjected to discrimination under any program or activity receiving Federal assistance; and the Age Discrimination Act of 1975 prohibits discrimination on the basis of age in the administration of programs or activities receiving Federal assistance.

The regulation is divided into eight subparts. Subpart A (General Provisions) defines the important terms that are used throughout the regulation and states in general terms the program requirements common to the several Federal statutes implemented by this regulation. It also sets forth what the Secretary, DOE, believes is a simple, workable system of administration: assurances of compliance, self-evaluation by recipients, establishment of complaint procedures, and notification of employees and beneficiaries of the recipient's policy of nondiscrimination on the basis of race, color, national origin, sex, handicap, or age.

Subpart B pertains to the various kinds of discriminatory acts prohibited as well as the specific applicability of Title VI of the Civil Rights Act of 1964, section 16 of the Federal Energy Administration Act of 1974, as amended, and section 401 of the Energy Reorganization Act of 1974, to the employment practices of the recipient. Such employment practices include recruitment, hiring, compensation, promotion, demotion, training, and use of facilities.

Subpart C deals with implementation of Title IX of the Education Amendments of 1972, as amended, which is designed to eliminate discrimination on the basis of sex in any education program or activity receiving Federal assistance. It defines specifically all exceptions to the statute including educational institutions which are controlled by religious organizations, educational institutions whose primary purpose is the training of individuals for military service or for the merchant marine, membership practices of certain social fraternities and sororities, the Y.M.C.A., Girl Scouts, Boy Scouts, Camp Fire Girls, and the membership practices of certain voluntary youth service organizations.

Subpart D pertains to section 504 of the Rehabilitation Act of 1973 and defines in general terms the discriminatory acts prohibited, applicable parameters set for recipient's employment criteria, limitations of preemployment inquiries, and requirement of recipients to assure reasonable accommodation to qualified handicapped applicants, employees, or beneficiaries. It also establishes requirements for rendering existing and newly constructed facilities accessible to qualified handicapped applicants, employees, or beneficiaries.

Subparts E and F deal with the Age Discrimination Act of 1975 which prohibits discrimination on the basis of age in federally assisted programs and Title VIII of the Civil Rights Act of 1968 (the Fair Housing Law) which prohibits discrimination on the basis of race, color, national origin, religion, and sex in the sale or leasing of Federally assisted housing, respectively. Subparts E and F are reserved until such time as the applicability of the Federal statutes to the Department of Energy is determined.

Subparts G and H deal with the application of program monitoring and enforcement requirements and procedures common to the various Federal statutes included in the implemented by this regulation.

III. COMMENT PERIOD

Interested persons are invited to submit written comments with respect to the proposed regulation to Carlos Ruiz, Director, Federally Assisted Programs Division, Office of Equal Opportunity, Department of Energy, Room 6105, 20 Massachusetts Avenue NW., Washingtion, D.C. 20545. Comments should be identified on the outside of the envelope and on the documents submitted to DOE with the designation "Comments on Nondiscrimination in Federally Assisted Programs Regulation." Five (5) copies should be submitted. All comments and related information should be received by DOE within 15 days following the final day of the 31 day comment period in order to insure consideration.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. Any material not accompanied by a statement of confidentiality will be considered to be non-confidential. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

NOTE.—The Department of Energy has determined that this document does not contain a major proposal requiring preparation of an economic impact analysis (EIA) statement under Executive Orders 11821 and 11949 and OMB Circular A-107.

Issued in Washington, D.C., November 7, 1978.

JOHN F. O'LEARY,
Deputy Secretary,
Department of Energy.

Chapter X, Title 10 of the Code of Federal Regulations is amended by adding a proposed new Part 1040, reading as follows:

PART 1040—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Subpart A—General Provisions

Subpart B—Title VI of the Civil Rights Act of 1964, Section 16 of the Federal Energy Administration Act of 1974, as amended, and Section 401 of the Energy Reorganization Act of 1974.

Subpart C—Nondiscrimination on the Basis of Sex—Title IX of the Higher Education Amendment of 1972, as amended

Subpart D—Nondiscrimination on the Basis of Handicap—Section 504 of the Rehabilitation Act of 1973, as amended

GENERAL PROVISIONS

EMPLOYMENT PRACTICES

PROGRAM ACCESSIBILITY

Subpart E—Nondiscrimination on the Basis of Age—Age Discrimination Act of 1975, as amended

Subpart F—Nondiscrimination Under VIII of the Civil Rights Act of 1968, as amended.

Subpart G—Program Monitoring

Subpart H—Enforcement

MEANS OF EFFECTING COMPLIANCE

OPPORTUNITY FOR HEARING

HEARINGS AND FINDINGS

DECISION AND NOTICE

JUDICIAL REVIEW

AUTHORITY: Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat 241, 42 U.S.C. 2000d; section 16 of the Federal Energy Administration Act of 1974, Pub. L. 93-275, 88 Stat 96, 15 U.S.C. 775; section 401 of the Energy Reorganization Act of 1974, Pub. L. 93-438, 88 Stat 1233, 42 U.S.C. 5891; Title IX of the Higher Education Amendments of 1972, Pub. L. 92-318, 86 Stat 235, 20 U.S.C. 1681; section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat 355, 29 U.S.C. 794, the Age Discrimination Act of 1975, Pub. L. 94-135, 89 Stat 728, 42 U.S.C. 6101; Title VIII of the Civil Rights Act of 1968, Pub. L. 90-284, 82 Stat. 73, 42 U.S.C. 3601-3707.

Subpart A—General Provisions

§ 1040.1 Purpose.

The purpose of this Part is to implement Title VI of the Civil Rights Act of 1964, Pub. L. 88-352; section 16 of the Federal Energy Administration Act of 1974, as amended, Pub. L. 93-275; section 401 of the Energy Reorganization Act of 1974, Pub. L. 93-438; Title IX of the Education Amendments of 1972, as amended, Pub. L. 92-318 and Pub. L. 93-568; section 504 of the Rehabilitation Act of 1973, as amended, Pub. L. 93-112; the Age Discrimination Act of 1975, Pub. L. 94-135; and Title VIII of the Civil Rights Act of 1968, Pub. L. 90-284; so no person shall on the ground of race, color, national origin, sex, handicap, or age be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment, where the main purpose of the program or activity is to provide employment or when the delivery of program services is affected by the recipient's employment practices, in connection with any program or activity receiving Federal assistance from the Department of Energy (after this referred to as DOE or the Department).

§ 1040.2 Application.

(a) The application of this Part is to any program or activity for which Federal assistance is authorized under laws administered by DOE. Programs to which this Part applies are listed in Appendix A of this Part; Appendix A is to be revised from time to time by notice published in the FEDERAL REGISTER. This Part applies to money paid, property transferred, or other Federal assistance including cooperative agreements extended under any program or activity, by way of grant, loan, or contract by DOE, or an authorized contractor or subcontractor of DOE, the terms of which require compliance with this Part. If any statutes implemented by this Part are otherwise applicable, the failure to list a program in Appendix A does not mean the program is not covered by this Part.

(b) This Part does not apply to—

(1) contracts of insurance or guaranty; or

(2) employment practices under any program or activity except as provided in §§ 1040.12, 1040.41 and 1040.66.

§ 1040.3 Definitions—General.

(a) "Academic institution" includes any school, academy, college, university, institute, or other association, organization, or agency conducting or administering any program, project, or facility designed to educate or train individuals.

(b) "Administrative law judge" means a person appointed by the reviewing authority to preside over a hearing held under this Part.

(c) "Agency" or "Federal agency" refers to any Federal department or agency which extends Federal assistance.

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

(e) "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

(f) "Associate Director" refers to the Associate Director, Federal Assistance Programs Division, Office of Equal Opportunity, DOE.

(g) "Compliance Review" means an analysis of a recipient's selected employment practices or delivery of services for adherence to provisions of any of the subparts of this Part.

(h) "Department" means the Department of Energy (DOE).

(i) Where designation of persons by race, color, or national origin is required, the following designations are to be used:

(1) *Black*, not of Hispanic origin. A person having origins in any of the black racial groups of Africa.

(2) *Hispanic*. A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race.

(3) *Asian or Pacific Islander*. A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This includes, for example, China, India, Japan, Korea, the Philippine Islands, and Somoa.

(4) *American Indian or Alaskan Native*. A person having origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition.

(5) *White, not of Hispanic Origin*. A person having origins in any of the original peoples of Europe, North Africa, or the Middle East. Additional subcategories based on national origin or primary language spoken may be used where appropriate on either a national or a regional basis. Subparagraphs (1) through (5), inclusive, set forth in this section are in conformity with the office of Management and Budget (OMB) Ad Hoc Committee on Race/Ethnic Categories recommendations. To the extent that these designation are modified by the OMB Ad Hoc Committee, subparagraphs (1) through (5), inclusive, set forth in this section are to be interpreted to conform with those modifications.

(j) "Director" means the Director, Office of Equal Opportunity, DOE.

(k) "Disposition" means any treatment, handling, decision, sentencing, confinement, or other proscription of conduct.

(l) "Employment practices," see individual section headings.

(m) "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, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration, or acquisition of facilities.

(n) "Federal financial assistance" or "Federal assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interest in property, (3) the detail of or provision of services by Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property, the funishing of services without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by the sale, lease, or furnishing of services to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(o) "General Counsel" means the Office of the General Counsel, Department of Energy.

(p) "Government organization" means the political subdivision for a prescribed geographical area.

(q) "Investigations" include factfinding efforts and attempts to secure voluntary resolution of complaints.

(r) "Noncompliance" means the failure of a ricipient or subrecipient to comply with any subpart of this Part.

(s) "Primary recipient" means any person, group, organization, State, or local unit of government which is authorized or required to extend Federal assistance to another recipient for the purpose of carrying out a program.

(t) "Program" includes any project or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, rehabilitation, or other services or disposition, whether provided through employees of the recipient or by others through contracts or other arrangements with the recipient, and including work opportunities and cash, loan, or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid, or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal assistance include any disposition, services, financial aid, or other benefits provided with the aid of Federal assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal assistance, and to include any disposition, services, financial aid, or benefits provided in or through a facility provided with the aid of the Federal assistance or such non-Federal resources.

(u) "Recipient" means any person, State, or its political subdivision, any instrumentality of a state or its political subdivision, and public or private agency, institution, organization, or other entity, or any program to which Federal assistance is extended directly or through another recipient, but excludes any ultimate beneficiary of the assistance.

(v) "Responsible Departmental or DOE Official" means the official of the Department of Energy that has been assigned the principal responsibility for administration of the law extending Federal assistance.

(w) "Reviewing authority" means the component of the Department delegated authority by the Secretary to appoint, and to review the decisions of, administrative law judges in cases arising under this Part.

(x) "Secretary" means the Secretary of the Department of Energy.

(y) The term "United States" includes the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and all other territories and possessons of the United States, and the term "State" includes any one of the foregoing.

(z) "Headquarters" means DOE offices located in Washington, D.C.

§ 1040.4 Assurances required and preaward review.

(a) Assurances. An applicant for Federal assistance for a program or activity to which this Part applies shall submit an assurance on a form specified by the Director, that the progam or activity will be operated in compliance with this Part. Such assurances are to include provisions which give the United States a right to seek judicial enforcement.

(b) Duration of obligation. (1) In the case of Federal assistance extended in the form of real property or to provide real property or structure on the property, the assurance obligates 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 assistance is extended or for another purpose involving the provision of similar services or benefits.

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

(3) In all other cases, the assurance obligates the recipient to all terms and conditions contained in the certificate of assurance for the period during which Federal assistance is extended.

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

(2) Where no transfer of property is involved or imposed 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 interest in the property from the Department, the covenant is to 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 material breach of the covenant. If a transferee of real property manages 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 purpose for which the property was transferred, the Director may, upon request of the transferee and, if necessary to accomplish such financing and upon such conditions, as he or she deems appropriate, agree to forbear the exercise of the right to revert title for so long as the lien of the mortgage or other encumbrance remains effective.

(d) Assurances from Government agencies. In the case of any application from any department, agency or office of any State or local government for Federal financial assistance for any specified purpose, the assurance required by this section, is to extend to any other department, agency, or office of the same governmental unit if the policies of such other department, agency, or office will substantially affect the project for which Federal financial assistance is requested. That requirement may be waived by the responsible Department official if the applicant establishes, to the satisfaction of the responsible Department official, that the practices in other agencies or parts of programs of the governmental unit will in no way affect—

(1) its practices in the program for which Federal financial assistance is sought;

(2) the beneficiaries of or participants in or persons affected by such program; or

(3) full compliance with the subpart as respects such program.

(e) Assurance from academic and other institutions.

(1) In the case of any application for Federal financial assistance for any purpose to an academic institution, the assurance required by this section is to extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an academic institution, detention or correctional facility, or any other institution or facility, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, wards, inmates, persons subject to control, or clients of the institution or facility or to the opportunity to participate in the provision of services, disposition, treatment, or benefits to such individuals, shall be applicable to the entire institution or facility unless the applicant establishes, to the satisfaction of the responsible Department official, that the practices in designated parts or programs of the institution or facility will in no way affect its practices in the program of the institution or facility for which Federal financial assistance is sought, or the beneficiaries of, or participants in, such program.

(f) Continuing State programs. Any State or State agency administering a program which receives continuing Federal financial assistance subject to this regulation shall, as a condition for the extension of such assistance—

(1) provide a statement that the program is (or, in the case of a new program, will be) conducted in compliance with this regulation; and

(2) provide for such methods of administration as are found by the responsible Department official to give reasonable assurance that the primary recipient and all other recipients of Federal financial assistance under such program will comply with this regulation.

(g) Assistance for construction. Where the assistance is sought for the construction of a facility, or a part of a facility, the assurance is to extend to the entire facility and to facilities operated in connection with it. In particular, if a facility to be constructed is part of a larger system, the assurance is to extend to the larger system.

(h) Preaward review. Prior to and as a condition of approval, all applications for Federal financial assistance are to be reviewed by the appropriate Civil Rights Department official who is to make a written determination of the applicant's compliance with this Part. The basis for such a determination is to be the submission of the assurance of compliance as specified in paragraph (a) and a review of data to be submitted by the applicant as specified by the Director. For purposes of this paragraph, the appropriate departmental official at headquarters level is the Associate Director, Office of Equal Opportunity, and at the regional level it is to be the Civil Rights Officer delegated by the Director as having review authority for determining compliance with requirements of this Part. Where a determination of compliance cannot be made from this data, DOE may require the applicant to submit necessary additional information and may take other steps necessary to make the determination of compliance. Such other steps may include, for example, communicating with local government officials or minority group organizations and field reviews. Any agreement to achieve voluntary compliance as a result of a preaward review shall be in writing. In the case of title VI, the Director will notify the Assistant Attorney General of instances of probable noncompliance determined as the result of application reviews. The opportunity for a hearing as provided under § 1040.113 is applicable to this section.

§ 1040.5 Designation of responsible employee and adoption of complaint procedures.

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

(b) Complaint procedure of recipient. A recipient shall adopt and publish in accordance with appropriate DOE approval and guidelines, complaint procedures providing for prompt and equitable resolution of any action which would be prohibited by this Part.

(c) A recipient shall display prominently, in reasonable numbers and places, posters which state that the recipient operates a program or programs subject to the nondiscrimination provisions of this Part, summarize those requirements, note the availability of information regarding this Part from the recipient and DOE, and explain briefly the procedures for filing a complaint. Information on requirements of this Part, complaint procedures and the rights of beneficiaries are to be included in handbooks, manuals, pamphlets, and other materials which are ordinarily distributed to the public to describe the federally assisted programs and the requirements for participation by recipients and beneficiaries. To the extent that recipients are required by law or regulation to publish or broadcast program information in the news media, the recipient shall insure that such publications and broadcasts state that the program in question is an equal opportunity program or otherwise indicate that discrimination in the program is prohibited by Federal law.

(d) Where a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program requires service or information in a language other than English in order to be informed of or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and size and concentration of such population, to provide information in appropriate languages (including braille) to such persons. This requirement applies to written material of the type which is ordinarily distributed to the public. The Department may require a recipient to take additional steps to carry out the intent of this subsection.

§ 1040.6 Notice.

(a) A recipient shall take appropriate, initial, and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of race, color, national origin, sex, handicap, or age. The notification is to state, where appropriate, that the recipient does not discriminate in admission or access to, and treatment of, or employment in its programs and activities and inform employees of their rights under this Part. The notification is to include an identification of the responsible employee designated under § 1040.5. 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 the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications, and distribution of memoranda or other written communications.

(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.

(c) The provisions of § 1040.5(d) to provide information in appropriate languages (including braille), apply to this section.

§ 1040.7 Remedial and affirmative action and self-evaluation.

(a) Remedial action. If the Director finds that a recipient has discriminated against persons on the basis of race, color, national origin, sex, handicap, or age in any program or activity receiving Federal assistance, the recipient shall take remedial action as the Director considers necessary to overcome the effects of the discrimination.

(b) Affirmative action. In the absence of a finding of discrimination on the basis of race, color, national origin, sex, handicap, or age in any program or activity a recipient may take affirmative action to overcome effects of conditions which resulted in limited participation by persons of a particular race, color, national origin, sex, handicap, or age.

(c) Self-evaluation. Each recipient shall, within 1 year of the effective date of this Part:

(1) Evaluate, in terms of the requirements of this Part, its current policies and practices and their effects concerning personnel working in connection with the recipient's program or activity;

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

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

(d) Availability of self-evaluation and related materials. Recipients shall maintain on file, for at least 3 years following its completion, the evaluation required under paragraph (c) of this section, and shall provide to the Director upon request, a description of any modifications made under paragraph (c) (2) of this section and of any remedial steps taken under paragraph (c) (3) of this section.

Subpart B—Title VI of the Civil Rights Act of 1964; Section 16 of the Federal Energy Administration Act of 1974, as amended; and Section 401 of the Energy Reorganization Act of 1974

§ 1040.11 Purpose and application.

(a) The purpose of this subpart is to implement Title VI of the Civil Rights Act of 1964 (after this referred to as Title VI) and the pertinent regulations of DOE so that no person in any program or activity receiving Federal assistance shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under covered employment, as defined in § 1040.12, in connection with any program or activity receiving, in whole or in part, Federal assistance of the type subject to Title VI. This subpart is also to implement section 16 of the Federal Energy Administration act of 1974, as amended (after this referred to as section 16) and section 401 of the Energy Reorganization Act of 1974 (after this referred to as section 401) so that no person in any program or activity receiving Federal assistance shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under covered employment, as defined in § 1040.12, in connection with any program or activity receiving, in whole or in part, Federal assistance from DOE.

(b) The application of this subpart is to delivery of services by and the covered employment practices of recipients and subrecipients administering, participating in, or substantially bene fiting from any program or activity receiving Federal assistance under laws administered by DOE covered by Title VI, section 16 or section 401.

§ 1040.12 Definitions

(a) "Covered employment" means employment practices covered by Title VI, sections 16 and 401. Such practices are those which—

(1) exist in a program where a primary objective of the Federal assistance is to provide employment; or

(2) cause discrimination on the basis of race, color, sex, or national origin with respect to beneficiaries or potential beneficiaries of the assisted program.

(b) "Title VI" refers to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* Where appropriate, this term also refers to the civil rights provision of other Federal statutes to the extent that they prohibit discrimination on the grounds of race, color, or national origin in programs receiving Federal assistance of the type subject to Title VI itself. The definitions set forth in § 1040.3 of Subpart A, to the extent not inconsistent with this subpart, are applicable to and incorporated into this subpart.

§ 1040.13 Discrimination prohibited.

(a) General. No person in the United States shall be excluded on the ground of race, color, national origin, or sex, from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this subpart applies.

(b) Specific discriminatory action prohibited. A recipient under any program to which this subpart applies may not, directly or through contractual or other arrangements, on the ground of race, color, national origin or sex:

(1) Deny an individual any disposition, service, financial aid, or benefit provided under the program;

(2) Provide any disposition, service, financial aid, or benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(3) Subject an individual to segregation or separate treatment in any matter related to his receipt of any disposition, service, financial aid, or benefit under the program;

(4) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any disposition, service, financial aid, or benefit under the program;

(5) Treat an individual differently from others in determining whether such individual satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any disposition, service, financial aid, function, or benefit provided under the program;

(6) Deny an individual an opportunity to participate in the program through the provision of services or otherwise afford such individual an opportuniy to do so which is different from that afforded others under the program (including the opportunity to participate the program as an employee but only to the extent set forth in § 1040.14 of this subpart; or

(7) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(c) A recipient, in determining the type of Federal assistance (i.e., disposition, services, financial aid, benefits, or facilities) which will be provided under any program, or the class of individuals to whom, or the situations in which the assistance will be provided, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the program objectives with respect to individuals of a particular race, color, national origin, or sex.

(d) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination because of race, color, national origin, or sex, or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of Title VI or this subpart.

(e) For the pupose of this section, the disposition, services, financial aid, or benefits provided under a program receiving Federal assistance include any portion of any program, function, or activity conducted by a recipient of Federal assistance in which the program, function, or activity is directly or indirectly improved, enhance, enlarged, or benefited by the Federal assistance or by which the recipient makes use of any facility, equipment, or property provided with the aid of Federal assistance.

(f) The enumeration of specific forms of prohibited discrimination in this paragraph and in § 1040.14 of this subpart does not limit the generality of the prohibition in paragraph (a) of this section.

(g) Exemptions—Exclusion from programs for protected groups. An individual is not to be considered subjected to discrimination by reason of his/her exclusion from the benefits of a program limited to individuals of a particular race, color, national origin, or sex different from his/hers when the exclusion is provided for or required by Federal law, for example, programs funded exclusively to serve on-reservation Indians.

§ 1040.14 Covered employment.

(a) Employment practices. (1) Whenever a primary objective of the Federal assistance to a program to which this subpart applies is to provide employment, a recipient of the assistance may not (directly or through contractual or other arrangements) subject any individual to discrimination on the grounds of race, color, national origin, or sex in its employment practices under the program (including recruitment or recruitment advertising, employment, layoff, or termination, upgrading, demotion or transfer, training, participation in upward mobility programs, rates of pay or other forms of compensation, and use of facilities). This prohibition also applies to programs where the primary objective of the Federal assistance is—

(i) To assist individuals through employment to meet expenses incident to the commencement or continuation of their education or training;

(ii) To provide work experience which contributes to the education or training of the individuals involved;

(iii) To reduce the unemployment of individuals or to help them through employment to meet subsistence needs; or

(iv) To provide employment to individuals who, because of handicaps, cannot be readily absorbed in the competitive labor market. The requirements applicable to construction employment under any such program are to be those specified in or under Part III of Executive Order 11246, as amended, or any Executive order which supersedes it.

(2) In regard to Federal assistance which does not have provision of employment as a primary objective, the provisions of paragraph (a)(1) of this section apply to the employment practices of the recipient if discrimination

on the grounds of race, color, national origin, or sex in such employment practices tends to exclude persons from participation in, deny them the benefits of, or subject them to discrimination under the program receiving Federal assistance. In any such case, the provisions of paragraph (a)(1) of this section apply, to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.

(b) Enforcement of Title VI compliance with respect to covered employment practices is not to be superseded by State or local merit systems relating to the employment practices of the same recipient.

Subpart C—Nondiscrimination on the Basis of Sex—Title IX of the Higher Education Amendments of 1972, as Amended

§ 1040.21 Purpose.

The purpose of this Part is to implement title IX of the Education Amendments of 1972, Pub. L. 92-318, as amended by Pub. L. 93-568, which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal assistance, whether or not the program or activity is offered or sponsored by an educational institution as defined in this subpart.

§ 1040.22 Application.

Except as provided in §§ 1040.25, 1040.26, and 1040.27, this subpart applies to every recipient and to each education program or activity operated by the recipient which receives or benefits from Federal assistance.

§ 1040.23 Definitions.

(a) "Title IX" means Title IX of the Education Amendments of 1972, Pub. L. 92-318, as amended by section 3 of Pub. L. 93-568, 88 Stat. 1855, (except sections 904 and 906 of the Amendments), 20 U.S.C. sections 1681, 1682, 1683, 1685, and 1686.

(b) "Educational Institution" means a local educational agency (L.E.A.) as defined by section 801 (f) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 881), a pre-school, a private elementary or secondary school, or an applicant or recipient of the type defined by paragraphs (c), (d), (e), or (f) of this section.

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

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

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in the field is awarded by an institution of undergraduate higher education or professional education); or (3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

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

(1) An institution offering at least 2 but less than 4 years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

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

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

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

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

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

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

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

(j) "Transition plan" means a plan subject to the approval of the United States Commissioner of Education under section 901(a)(2) of the Education Amendments of 1972, under which an educational institution operates in making the transition from being an educational institution which admits only students of one sex to being one which admits students of both sexes without discrimination. The definitions set forth in § 1040.3 of Subpart A of this Part, to the extent not inconsistent with this subpart, are made applicable to and incorporated into this subpart.

§ 1040.24 Effects of other requirements.

(a) Effect of other Federal provisions. The obligations imposed by this subpart are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended; sections 799A and 845 of the Public Health Service Act (42 U.S.C. 295h-9 and 298b-2), the Equal Pay Act (29 U.S.C. 206 and 206(d)); and any other Act of Congress or Federal regulation.

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

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

§ 1040.25 Educational institutions controlled by religious organizations.

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

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

§ 1040.26 Military and merchant marine educational institutions.

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

§ 1040.27 Membership practices of certain organizations.

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

(b) Y.M.C.A., Y.W.C.A., Girl Scouts, Boy Scouts, and Camp Fire Girls. This subpart does not apply to the membership practices of the Young Men's Christian Association, the Young Women's Christian Association, the Girl Scouts, the Boy Scouts, and the Camp Fire Girls.

(c) Voluntary youth service organizations. This subpart does not apply to the membership practices of voluntary youth service organizations which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, the membership of which has been traditionally limited to members of one sex and principally to persons of less than 19 years of age.

§ 1040.28 Admissions.

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

(b) Administratively separate units. For the purposes, only, of this section, §§ 1040.28 and 1040.29, each administratively separate unit shall be deemed to be an educational institution.

(c) Application of § 1040.31 through § 1040.33. Except as provided in paragraphs (c) and (d) of this section, § 1040.31 through § 1040.33 apply to each recipient. A recipient to which § 1040.31 through § 1040.33 apply shall not discriminate on the basis of sex in admission or recruitment in violation of those sections.

(d) Educational institutions. Except as provided in paragraph (e) of this section as to recipients which are educational institutions, § 1040.31 through § 1040.33 apply only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) Public institutions of undergraduate higher education. §§ 1040.31 through 1040.33 do not apply to any public institutions of undergraduate higher education which, traditionally and continually from its establishment, has had a policy of admitting only students of one sex.

§ 1040.29 Educational institutions eligible to submit transition plans.

(a) Application. This section applies to each educational institution to which §§ 1040.31 through 1040.33 apply which:

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

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

(b) Provision for transition plans. An educational institution to which this section applies is not to discriminate on the basis of sex in admission or recruitment in violation of §§ 1040.31 through 1040.33 unless it is carrying out a transition plan approved by the U.S. Commissioner of Education as described in § 1040.30, which plan provides for the elimination of discrimination by the earliest practicable date but in no event later than June 23, 1979.

§ 1040.30 Transition plans.

(a) *Submission of plans.* Any institution to which § 1040.28 applies and which is composed of more than one administratively separate unit may submit either a single transition plan applicable to all units, or separate transition plans applicable to each unit.

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

(1) State the name, address, and Federal Interagency Committee on Education (FICE) Code of the educational institution submitting the plan, the administratively separate units to which the plan is applicable, the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief adminstrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

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

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

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

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

(c) *Nondiscrimination.* No policy or practice of a recipient to which § 1040.29 applies is to result in treatment of applicants to, or students of, the recipient in violation of §§ 1040.31 through 1040.33 unless such treatment is necessitated by an obstacle identified in paragraph (b) (3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b) (4) of this section.

(d) Effects of past exclusion. To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § 1040.29 applies is to include in its transition plan and implement specific steps designed to encourage individuals of the previously excluded sex to apply for admission to the institution. The steps are to include instituting recruitment programs which emphasize the institution's commitment to enrolling students of the sex previously excluded.

§ 1040.31 Discrimination on the basis of sex in admission and recruitment prohibited: Admission.

(a) General. No person shall, on the basis of sex, be denied admission or be subjected to discrimination in admission by any recipient to which §§ 1040.31, 1040.32, and 1040.33 apply, except as provided in §§ 1040.29 and 1040.30.

(b) Specific prohibitions. (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ 1040.31, 1040.32, and 1040.33 apply shall not—

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

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

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

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

(c) Prohibitions relating to marital or parental status. In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ 1040.31, 1040.32, and 1040.33 apply:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student

or applicant which treats persons differently on the basis of sex;

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

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

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

§ 1040.32 Preference in admission.

A recipient to which §§ 1040.31, 1040.32, and 1040.33 apply shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity which admits as students or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of §§ 1040.31, 1040.32, and 1040.33.

§ 1040.33 Recruitment.

(a) Nondiscriminatory recruitment. A recipient to which §§ 1040.31, 1040.32, and 1040.33 apply shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action under § 1040.7(a) and may choose to undertake these efforts as affirmative action under § 1040.7(b).

(b) Recruitment at certain insitutions. A recipient to which §§ 1040.31, 1040.32, and 1040.33 apply shall not recruit primarily or exclusively at educational institutions, schools, or entities which admit as students only or predominantly members of one sex, if these actions have the effect of discriminating on the basis of sex in violation of §§ 1040.31, 1040.32, and 1040.33.

§ 1040.34 Education programs and activities.

(a) *General.* Except as provided elsewhere in this subpart, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives or benefits from Federal assistance. Ths subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of—

(1) A recipient to which §§ 1040.31, 1040.32, and 1040.33 do not apply; or

(2) An entity, not a recipient, to which §§ 1040.31, 1040.32, and 1040.33 would not apply if the entity were a recipient.

(b) Specific prohibitions. Except as provided in § 1040.34 through § 1040.45, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex—

(1) Treat one person differently from another in determining whether the person satisfies any requirement or condition for the provision of the aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Discriminate against any person in the application of any rules of appearance;

(6) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for instate fees and tuition;

(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(8) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) Assistance administered by a recipient educational institution to study at a foreign institution. A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, which are designed to provide opportunities to study abroad, and which are awarded to students who are already matriculating at or who are graduates of the recipient institution provided, a recipient educational institution which administers or assists in the administration of such scholarships, fellowships, or other awards which are restricted to members of one sex provides, or other wise makes available, reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) Programs not operated by recipient. (1) This paragraph applies to recipients which require participation by any applicant or student in any education program or activity not operated wholly by the recipient, or which facilitates, permits, or considers participation in educational consortia and cooperative employment and student-teaching assignments.

(2) The recipient: (i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of the recipient which this subpart would prohibit the recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider participation if such action occurs.

§ 1040.35 Housing.

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

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

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

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

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

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

(2) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take reasonable action as may be necessary to assure itself that housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole:

(i) Proportionate in quantity; and

(ii) Comparable in quality and cost to the student. A recipient may render this assistance to any agency, organization, or person which provides all or part of such housing to students only of one sex.

§ 1040.36 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but the facilities provided for students of one sex are to be comparable to the facilities provided for students of the other sex.

§ 1040.37 Access to course offerings.

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

(a) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than 1 year from the effective date of this regulation.

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

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

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

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

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

§ 1040.38 Access to schools operated by LEAs.

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

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

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

§ 1040.39 Counseling and use of appraisal and counseling materials.

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

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

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

§ 1040.40 Financial assistance.

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

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

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

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

(b) Financial aid established by certain legal instruments.

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

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

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

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

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

(c) *Athletic scholarships.*

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

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams of members of each sex to the extent consistent with this section and § 1040.44 of this subpart.

§ 1040.41 Employment assistance to students.

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

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

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

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

§ 1040.42 Health and insurance benefits and services.

In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex. This section is not to prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.

§ 1040.43 Marital or parental status.

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

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

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

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

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

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

§ 1040.44 Athletics.

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

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

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

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

(2) The provision of equipment and supplies;

(3) Scheduling of games and practice time;

(4) Travel and per diem allowance;

(5) Opportunity to receive coaching and academic tutoring;

(6) Assignment and compensation of coaches and tutors;

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

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

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

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

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

§ 1040.45 Textbooks and curricular material.

Nothing in this regulation is to be interpreted as requiring, probihiting, or abridging, in any way, the use of particular textbooks or curricular materials.

§ 1040.46 Procedures.

The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 are adopted and incorporated in this section by reference. These procedures may be found in subparts G and H of this Part.

Subpart D—Nondiscrimination on the Basis of Handicap—Sec. 504 of the Rehabilitation Act of 1973, as amended

GENERAL PROVISIONS

§ 1040.61 Purpose and application.

(a) The purpose of this subpart is to implement section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal assistance.

(b) This subpart applies to each recipient or subrecipient of Federal assistance from DOE and to each program or activity that receives or benefits from assistance.

§ 1040.62 Definitions.

(a) "Executive Order" means Executive Order 11914, titled "Nondiscrimination With Respect to the Handicapped in Federally Assisted Programs" issued on April 28, 1976.

(b) "Section 504" means section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(c) "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 impairment, or is regarded as having such an impairment.

(d) As used in paragraph (c) of this section, the phrase:

(1) "Physical or mental impairment" means—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affection one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic an lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

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

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) 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;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraphs (d)(1) (i) and (ii) of this section, but is treated by a recipient as having such an impairment.

(e) "Qualified handicapped person" means—

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

(2) With respect to public preschool, elementary, secondary, or adult education services, a handicapped person:

(i) Of an age during which nonhandicapped persons are provided such services;

(ii) Of any age during which it is mandatory under State law to provide such services to handicapped persons; or

(iii) To whom a State is required to provide a free appropriate public education under section 712 of the Handicapped Act.

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

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

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

The definitions set forth in § 1040.3 of subpart A of this Part, to the extent not inconsistent with this subpart, are made applicable to and incorporated into this subpart.

§ 1040.63 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 that receives or benefits from Federal assistance from DOE.

(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 person the opportunity to participate in or benefit from the aid, benefit, or service;

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

(iii) 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 as that provided to others;

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

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

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

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the 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 permissible separate or different programs or activities, a recipient may not deny a qualified handicapped person the opportunity to participate in 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 that—

(i) Have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap;

(ii) 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) Perpetuate the discrimination of another recipient if both recipients are subject to common admininstrative control or are agencies of the same State.

(5) In determining the site of a facility, an applicant for assistance or a recipient may not make selections that—

(i) Have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives Federal assistance from DOE; or

(ii) Have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal 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 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) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

§ 1040.64 Effect of State or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this subpart 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.

(c) Effect of other regulations. All regulations, orders, or similar directions issued by any officer of DOE which impose requirements designed to prohibit discrimination against individuals on the grounds of race, color, national origin, sex, age, or handicap under any program to which this Part applies, and which authorize the suspension, termination or refusal to grant or to continue Federal assistance under any program for failure to comply with these requirements, are superseded to the extent that discrimination is prohibited by this Part. Nothing in this Part is to relieve any person of the obligation assumed or imposed under any superseded regulation, order, instruction, or similar direction prior to the effective date of this Part. Nothing in this Part is to supersede Executive Orders 10925, 11114, 11063, 11246, and regulations issued under these authorities, or supersede any other regulations or instructions which prohibit discrimination on the grounds of race, color, national origin, sex, age, or handicap in any program or activity to which this Part applies.

§ 1040.65 Procedures.

The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 are adopted and incorporated in this section by reference. These procedures may be found in Subparts G and H of this Part.

EMPLOYMENT PRACTICES

§ 1040.66 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this Part applies.

(2) A recipient shall make all decisions concerning employment under any program or activity to which this Part applies in a manner which insures 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 discrmination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the recipient, and organizations providing training and apprenticeship programs.

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

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

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of 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 or otherwise;

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

(7) Selection and provision of 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 collection bargaining agreement to which it is a party.

§ 1040.67 Reasonable accommodations.

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

(1) The overall size of the recipient's program with respect to number 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 the recipient's workforce; and

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

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

§ 1040.68 Employment criteria.

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

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question; and

(2) Alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are shown by the recipient to be unavailable.

(b) A recipient shall select and administer tests concerning employment to best insure 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 other factors 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).

§ 1040.69 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a pre-employment medical examination or may not make pre-employment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature of severity of a handicap. A recipient may, however, make pre-employment 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, under § 1040.7 of Subpart A of this Part, or is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity under § 1040.7 of Subpart A of this Part, or when a recipient is taking affirmative action under Section 503 of the Rehabilitation Act of 1973, as amended, the recipient may invite applicants for employment to indicate whether, and to what extent, they are handicapped provided that:

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

(2) The recipient states clearly that the information is 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 subpart.

(c) Nothing in this section is to prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty provided that all entering employees are subjected to the examination regardless of handicap or absence of handicap and results of the examination are used only in accordance with the requirements of this subpart.

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

(1) Supervisors and managers may be informed regarding restriction 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 Section 504 of the Rehabilitation Act of 1973, as amended, shall be provided relevant information upon request.

PROGRAM ACCESSIBILITY

§ 1040.71 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unuseable by handicapped persons, be denied the benfits of, be excluded from participation in, or be subjected to discrimination under any program or activity that receives or benefits from Federal assistance from DOE.

§ 1040.72 Existing facilities.

(a) *Program accessibility.* A recipient shall operate any program or activity to which this subpart applies so that the program or activity, when viewed in its entirety, is readily assessible and useable by handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and useable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of § 1040.73 or any other methods that result in making its program or activity accessible to 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 requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within 60 days of the effective date of this Subpart except that where structural changes in facilities are necessary, the changes are to be made within three years of the effective date of this Subpart, but in any event, as expeditiously as possible.

(d) *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 6 months of the effective date of this Subpart, a transition plan setting forth the steps necessary to complete the changes. The plan is to be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, and the plan is to meet with the approval of the Associate Director. A copy of the transition plan is to be made available for public inspection. At a minimum, the plan is to:

(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 or the transition plan is longer than 1 year, identify steps that will be taken during each year of the transition period; and

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

(e) Notice. The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information concerning the existence and location of services, activities, and facilities that are accessible to, and useable by, handicapped persons.

§ 1040.73 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 is to be designed and constructed in a manner that the facility or part of the facility is readily accessible to, and useable by, handicapped persons, if the construction was commenced after the effective date of this subpart.

(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 Subpart in a manner that affects or could affect the useability of the facility or part of the facility is, to the maximum extent feasible, to be altered in a manner that the altered portion of the facility is readily accessible to and useable by handicapped persons.

(c) *American National Standards Institute, Incorporated, accessibility standards.* Design, construction, or alteration of facilities in conformance with the "American National Standard Specification for Making Buildings and Facilities Accessible to, and Useable by, the Physically Handicapped," published by the American National Standards Institute, Incorporated (ANSI A117.1-1961 (R1971),[1] which is incorporated by reference in this Subpart, are to constitute compliance with paragraphs (a) and (b) of this section. Departures from the particular requirements of those standards by the use of other methods are to be permitted with the concurrence of the Associate Director when it is clearly evident that equivalent access to the facility or part of the facility is provided.

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

Subpart E—Nondiscrimination on the Basis of Age—Age Discrimination Act of 1975, as amended.

§ 1040.81 [Reserved]

Subpart F—Nondiscrimination Under Title VIII of the Civil Rights Act of 1968, as amended

§ 1040.91 [Reserved]

Subpart G—Program Monitoring

§ 1040.101 Compliance reviews.

(a) The Director shall periodically conduct compliance reviews of selected recipients of DOE Federal assistance.

(b) The Director shall seek to review those recipients which have the most serious equal opportunity problems, or the greatest disparity in delivery of services on a nondiscriminatory basis. Selection for review is to be made on the basis of:

(1) The relative disparity between the percentage of minorities, women, or handicapped persons, in the relevant labor market, and the percentage of minorities, women, or handicapped persons, employed by the recipient;

(2) The percentage of minorities, women and handicapped persons in the population receiving project benefits;

(3) The number and nature of discrimination complaints filed against a recipient with DOE or other Federal agencies;

(4) The scope of the problems revealed by an investigation commenced on the basis of a complaint filed with DOE against a recipient; and

(5) The amount of assistance provided to the recipient.

(c) Within 30 days after selection of a recipient for review, DOE is to inform the recipient that it has been selected for review. The review will ordinarily be initiated by a letter requesting data pertinent to the review and advising the recipient of:

(1) The practices to be reviewed;

(2) The programs or activities affected by the review;

(3) The opportunity to make, at any time prior to receipt of DOE's finding, a documentary submission responding to DOE which explains, validates, or otherwise addresses the practices under review; and

(4) The schedule under which the review will be conducted and a determination of compliance or noncompliance made.

(d) Within 90 days of notifying a recipient that he has been selected for review, the Associate Director shall advise the recipient, in writing, of:

(1) Preliminary findings;

(2) Where appropriate, recommendations for achieving voluntary compliance; and

(3) The opportunity to request DOE to engage in voluntary compliance negotiations prior to the Director's final determination of compliance or noncompliance. The Director or his designee shall notify the Assistant Attorney General at the same time he notifies the recipient of any matter where recommmendations for achieving voluntary compliance are made.

(e) If, within 45 days of the recipient's notification under subsection (d) above, the Associate Director's recommendations for compliance are not met, or voluntary compliance is not secured, the matter will be forwarded to the Director for a determination of compliance on noncompliance. The determination is to be made no later than 15 days after conclusion of a 45 day negotiation period. If the Director makes a determination of noncompliance, the Department shall institute administrative proceedings specified in Subparts G and H.

(f) Where the Director makes a formal determination of noncompliance, the recipient and the Assistant Attorney General shall be immediately advised in writing of the determination and of the fact that the recipient has an additional 10 days in which to come into voluntary compliance. If voluntary compliance has not been achieved within the 10 days, the Director shall institute proceedings under Subpart H.

(g) All agreements to come into voluntary compliance shall be in writing and signed by the Director and an official who has authority to legally bind the recipient.

§ 1040.102 Compliance information.

(a) Cooperation and assistance. Each responsible Departmental official shall, to the fullest extent practicable, seek the cooperation of recipient in obtaining compliance with this Part and shall provide assistance and guidance to recipient to help them comply voluntary with this Part.

(b) *Compliance reports.* Each recipient shall keep reports and submit to the responsible Department official or his/her designee, timely, complete, and accurate compliance reports at the times, in such form, and containing information as the responsible Department official or the designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this Part. In general, recipients should have available for DOE data on the race, color, national origin, sex, age, and handicap status showing the extent to which members of minority groups are beneficiaries of federally assisted programs. In the case of any program under which a primary recipient extends Federal assistance to any other recipient of subcontracts with any other person or group, such other recipient shall also submit compliance reports to the primary recipient which will enable the primary recipient to carry out its obligations under this Part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official or his/her designee during normal business hours to books, records, personnel records, accounts, other sources of information, and its facilities, which are pertinent to ascertain compliance with this Part. The requirement for access to sources of information shall be contained in the certificate of assurance and agreed to by the recipient as a condition to award. Whenever any information required of a recipient is in the exclusive possession of any other agency, institution, or person and that agency, institution, or person fails or refuses to furnish that information, the recipient shall certify this in its report and set forth the efforts which it has made to obtain the information. The sub-recipient in such case shall be subject to proceedings described under Subpart H of this Part.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons information regarding the provisions of this section and its applicability to the program under which the recipient receives Federal assistance. Information is to be made available to beneficiaries, participants, and other interested persons in a manner which the responsible Department officials find necessary to inform such persons of the protections against discrimination assured them by this Part and the statutes to which this Part applies.

§ 1040.103 [Reserved]

§ 1040.104 Complaint investigation.

(a) The Associate Director shall investigate complaints of discrimination that allege a violation of—

(1) Title VI, of the Civil Rights Act of 1964, section 16 of the Federal Energy Administration Act of 1974, as amended, or section 401 of the Energy Reorganization Act of 1974;

(2) Title IX of the Education Amendments of 1972, as amended;

(3) Section 504 of the Rehabilitation Act of 1973, as amended;

(4) Age Discrimination Act of 1975, as amended, (reserved in this Part);

(5) Title VIII of the Civil Rights Act of 1968, as amended, (reserved in this Part); and

(6) This subpart.

(b) No complaint will be investigated if it is received by an appropriate Departmental official more than 180 days after the date of the alleged discrimination, unless the time for filing is extended by the Associate Director for good cause shown. Where a complaint is accepted for investigation, the Associuate Director will initiate a DOE investigation. The Associate Director, who is responsible for the investigation, shall notify the complainant, in writing, if the complaint has been accepted or rejected.

(c) The Associate Director or his/her designee shall conduct investigations of complaints as follows:

(1) Within 10 days of receipt of a complaint, the Associate Director shall:

(i) Determine whether DOE has jurisdiction under paragraphs (a) and (b) of this section;

(ii) If jurisdiction is not found, wherever possible refer the complaint to the Federal agency with such jurisdiction and advise the complainant;

(iii) If jurisdiction is found, notify the recipient alleged to be discriminating of its receipt of the complaint; and

(iv) Initiate the investigation.

(2) The investigation will ordinarily be initiated by a letter requesting data pertinent to the complaint and advising the recipient of:

(i) The nature of the complaint, and with the written consent of the complainant, the identity of the complainant;

(ii) The program or activities affected by the complaint;

(iii) The opportunity to make, at any time prior to receipt of DOE's findings, a documentary submission, responding to, rebutting, or denying the allegations made in the complaint; and

(iv) The schedule under which the complaint will be investigated and a determination of compliance or noncompliance made.

(3) Within 90 days of notifying a recipient that he has been selected for review, the Associate Director shall advise the recipient, in writing of:

(i) Preliminary findings;

(ii) Where appropriate, recommendations for achieving voluntary compliance; and

(iii) The opportunity to request DOE to engage in voluntary compliance negotiations prior to the Director's final determination of compliance or noncompliance. The Director or his designee shall notify the Assistant Attorney General at the same time he notifies the recipient of any matter where recommendations for achieving voluntary compliance are made.

(4) If, within 45 days of the recipient's notification under subsection (3) above, the Associate Director's recommendations for compliance are not met, or voluntary compliance is not secured, the matter will be forwarded to the Director for a determination of compliance or noncompliance. the determination is to be made no later than 15 days after conclusion of a 45 day negotiation period. If the Director makes a determination of noncompliance, the Department shall institute administrative proceedings specified in Subparts G and H.

(5) Where the Director makes a formal determination of noncompliance, the recipient and the Assistant Attorney General shall be immediately advised in writing of the determination and of the fact that the recipient has an additional 10 days in which to come into voluntary compliance. If voluntary compliance has not been achieved within the 10 days, the Director shall institute proceedings under Subpart H. All agreements to come into voluntary compliance shall be in writing and signed by the Director and an official who has authority to legally bind the recipient.

(6) If the complainant or party other than the Attorney General has filed suit in Federal or State court alleging the same discrimination alleged in a complaint to DOE, and if during DOE's investigation, the trial of that suit would be in progress, DOE will consult with the Assistant Attorney General and court records to determine the need to continue or suspend the investigation and will monitor the litigation through the court docket and contacts with the complainant. Upon receipt of notice that the court has made a finding of discrimination, against a recipient that would constitute a violation of this Part, the DOE shall institute administrative proceedings as specified in Subpart H. All agreements to come into voluntary compliance shall be in writing and signed by the Director and an official who has authority to legally bind the recipient.

(7) The time limits listed in paragraphs (c)(1) through (c)(6) of this section shall be appropriately adjusted where DOE requests another Federal agency to act on the complaint. DOE is to monitor the progress of the matter through liaison with the other agency. Where the request to act does not result in timely resolution of the matter, DOE is to institute appropriate proceedings as required by this Part.

(d) Intimidatory or retaliatory acts prohibited. No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws implemented in this Part or because the complainant has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subpart. The identity of complainants is to kept confidential except as determined by the Associate Director to be necessary to carry out the purpose of this subpart, including investigations, hearings, or judicial proceedings arising thereunder.

Subpart H—Enforcement

Means of Effecting Compliance

§ 1040.111 Means available.

If there appears to be a failure or threatened failure to comply with any of the provisions of this Part, and if the noncompliance or threatened noncompliance cannot be corrected by voluntary means, compliance with this Part may be effected by the suspension, termination of, or refusal to grant or to continue Federal assistance, or by any other means authorized by law. Such other means may include, but are not limited to—

(a) Referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law including other titles of the Civil Rights Act of 1964, other statutes to which this Part applies, or any assurance or other contractual undertaking; and

(b) Any applicable proceeding under State or local law.

§ 1040.112 Noncompliance with assurances.

If an applicant fails or refuses to furnish an assurance required under § 1040.4 of Subpart A of this part, or otherwise fails or refuses to comply with a requirement imposed by that section, such as § 1040.102(c), Subpart G of this Part, Federal assistance shall be refused in accordance with procedures of § 1040.113 of this subpart. DOE may defer action on pending applications for assistance in such a case during pendency of administrative proceedings under § 1040.113 of this subpart.

§ 1040.113 Termination of or refusal to grant or to continue Federal assistance.

No order suspending, terminating, or refusing to grant or continue Federal assistance is to become effective until—

(a) Notice of the proposed order is given to the Assistant Secretary, Intergovernmental and Institutional Relations, if the action is contemplated against a State or local government;

(b) The Director has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means. (It will be determined by the Director that compliance cannot be secured by voluntary means if it has not been secured within the time periods specifically set forth by this Part).

(c) There has been an express finding on the record after opportunity for hearing, of a failure by the applicant or recipient to comply with the requirement imposed by or under this Part;

(d) The action has been approved by the Secretary or his designee under § 1040.142; and

(e) The expiration of 30 days after the Secretary or his designee has filed with the committee of the House of Representatives and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend, terminate, or to refuse to grant or to continue Federal assistance is to be limited to the particular political entity or part of that entity or other applicant or recipient to whom the finding has been made and shall be limited in its effect to the particular program or part of the program in which the noncompliance has been found.

§ 1040.114 Other means authorized by law.

No action to effect compliance by any other means authorized by law is to be taken until—

(a) The Director has determined that compliance cannot be secured by voluntary means;

(b) The recipient or other person has been notified by the Director in writing that it has been found in formal noncompliance and that it has 10 days before formal enforcement proceedings begin in which to enter into a written voluntary compliance agreement.

(c) The expiration of at least ten (10) days from the mailing of the notice to the recipient or other person.

OPPORTUNITY FOR HEARING

§ 1040.121 Notice of opportunity for hearing.

(a) Whenever an opportunity for hearing is required by § 1040.113, the General Counsel or his/her designee shall serve on the applicant or recipient, by registered, certified mail, or return receipt requested, a notice of opportunity for hearing which will:

(1) Inform the applicant or recipient of the action proposed to be taken and of his right within twenty (20) days of the date of the notice of opportunity for hearing, or another period which may be specified in the notice, to request a hearing;

(2) Set forth the alleged item or items of noncompliance with this Part;

(3) Specify the issues;

(4) State that compliance with this Part may be effected by an order providing for the termination of or refusal to grant or to continue assistance, as appropriate, under the program involved; and

(5) Provide that the applicant or recipient may file a written answer to the notice of opportunity for hearing under oath or affirmation within twenty (20) days of its date, or another period which may be specified in the notice.

(b) The applicant or recipient may respond to a notice of opportunity for hearing by filing a written answer under oath or affirmation. The answer shall specifically admit or deny such allegation, or, where the applicant or recipient does not have knowledge or information sufficient to form a belief, the answer may so state and the statements shall have the effect of a denial. Allegations of fact not denied shall be deemed to be admitted. The answer shall separately state and identify matters alleged as affirmative defenses and may also set forth the matters of fact and law on which the applicant or recipient relies. The applicant or recipient may request a hearing on the answer.

(c) If the answer requests a hearing, the responsible DOE official will issue a notice of hearing specifying:

(1) The time, place, and nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held; and

(3) The matters of fact and law asserted or to be considered. The time and place of hearing will be fixed with due regard for the convenience and necessity of the parties or their representatives and for the public interest. An answer to a notice of hearing is not required.

(d) An applicant or recipient may file an answer, and waive or fail to request a hearing, without waiving the requirement for findings of fact and conclusions of law or the right to seek the Secretary's review in accordance with the provisions of §§ 1040.141 and 1040.142. At the time an answer is filed, the applicant or recipient may also submit written information or argument for the record if he does not request a hearing.

(e) An answer or stipulation may consent to the entry of an order in substantially the form set forth in the notice of opportunity for hearing: the order may be entered by the General Counsel or his/her designee. The consent of the applicant or recipient to the entry of an order shall constitute a waiver by him of a right to—

(1) A hearing under section 602 of Title VI of the Civil Rights Act of 1964 and § 1040.113;

(2) Findings of fact and conclusions of law; and

(3) seek the Secretary's review.

(f) The failure of an applicant or recipient to file an answer within the period prescribed, or, if he requests a hearing, his failure to appear at the hearing, shall constitute a waiver by him of a right to—

(1) A hearing under section 602 of Title VI of the Civil Rights Act of 1964 and § 1040.113;

(2) Conclusions of law; and

(3) Seek the Secretary's review. In the event of such a waiver, the responsible DOE official may find the facts on the basis of the record available and enter an order in substantially the form set forth in the notice of opportunity for hearing.

(g) An order entered in accordance with paragraph (e) or (f) of this section shall constitute the final decision of DOE, unless the Secretary on his own motion, within forty-five (45) days after entry of the order, issues his own decision, which shall then constitute the final decision of DOE.

(h) A copy of an order entered by the responsible DOE official shall be mailed to the applicant or recipient and to the complainant, if any.

HEARINGS AND FINDINGS

§ 1040.131 Presiding officer.

One or more administrative law judges appointed in accordance with 5 U.S.C. 3105 and 3344, are to —

(a) Preside at a hearing; and

(b) Make findings of fact and conclusions of law if an applicant or recipient waives a hearing and submits written information or argument for the record in accordance with § 1040.121.

§ 1040.132 Right to counsel.

In all proceedings under § 1040.121 through § 1040.151, the parties shall have the right to be represented by counsel. A notice of appearance is to be filed by counsel prior to participation in any such proceedings.

§ 1040.133 Procedures, evidence, and record.

(a) The hearing, decision, and any administrative review is to be conducted in conformity with 5 U.S.C. 554 through 557 and in accordance with such procedures as are proper and not inconsistent with § 1040.131 through § 1040.134, relating to the conduct of the hearing, giving of notices subsequent to those provided for in § 1040.121, taking of testimony, exhibits, arguments, and briefs, requests for findings, and other related matters. Both parties shall be entitled to introduce all relevant evidence on the issues as stated in the notice of hearing or as determined by the presiding officer at the outset of or during the hearing.

(b) Technical rules of evidence shall not apply to hearings conducted pursuant to this Part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the presiding officer. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record.

(c) Each decision made after a hearing has been held shall be based on the hearing record, and written findings shall be made.

(d) If an applicant or recipient waives a hearing and submits written information or argument for the record in accordance with § 1040.121(d), written findings shall be made.

§ 1040.134 Consolidated or joint hearings.

In cases in which the same or related facts are asserted to constitute noncompliance with this Part with respect to two or more programs to which this Part applies or noncompliance with this Part and the regulations of one or more other Federal departments or agencies issued to implement the requirements of the laws cited in this Part, the Secretary may, by agreement with other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings and for the application to such hearings of rules of procedure not inconsistent with this Part. Final decision in such cases, insofar as programs subject to this Part are concerned, shall be made in accordance with § 1040.142.

Decision and Notice

§ 1040.141 Initial decision or certification.

The officer designated, (a) to preside at a hearing, or, (b) to make findings of fact and conclusions of law where an applicant or recipient waives a hearing and submits written information or argument for the record in accordance with § 1040.121(d), shall render an initial decision on the record or, if the Secretary so directs, shall certify the entire record to the Secretary for decision, together with a recommended decision on the record. A copy of such initial decision, or of such certification and recommended decision, shall be mailed to the applicant or recipient.

§ 1040.142 Exceptions and final decision.

(a) The applicant or recipient, within thirty (30) days of the mailing of an initial decision or a recommended decision, may file with the Secretary any exceptions to the decision, with reasons for the exceptions.

(b) In the absence of exceptions of an initial decision, the Secretary may, on his own motion within forty-five (45) days after the mailing of the initial decision, serve on the applicant or recipient a notice that the Secretary will review the decision.

(c) Upon the filing of exceptions to an initial decision or of a notice of review, the Secretary shall review the initial decision and issue his own decision on the record with the reasons for the decision.

(d) In the absence of either exceptions to an initial decision or of a notice of review, an initial decision shall constitute the final decision of DOE.

(e) Upon the filing of exceptions to a recommended decision, the Secretary shall review the recommended decision and issue his own decision on the record with reasons for the decisions.

(f) In the absence of exceptions to a recommended decision, the Secretary shall review the recommended decision and issue his own decision on the record with reasons for the decision.

§ 1040.143 Rulings required.

Any decision of a presiding officer shall set forth the rulings on each findings, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or under this Part with which it is found the applicant or recipient has failed to comply.

§ 1040.144 Content of orders.

The final decision may provide for suspension, termination, or refusal to grant or continue Federal assistance, in whole or in part, under the program involved, and may contain terms, conditions, and other provisions that are consistent with and will implement the purposes of this Part. Such a decision may include provisions designed to assure that no Federal assistance is extended to any program or activity of the applicant or recipient determined by the decision to be in default in the performance of an assurance given by an applicant or recipient under this Part, or to have otherwise failed to comply with this Part, unless and until the applicant or recipient corrects its noncompliance and satisfies DOE that it will fully comply with this Part. A copy of the final decision is to be mailed to the applicant or recipient and the complainant, if any.

§ 1040.145 Post termination proceedings.

(a) An applicant or recipient adversely affected by an order issued under § 1040.144 shall be restored to full eligibility to receive Federal assistance if it satisfies the terms and conditions of that order for eligibility or if it brings itself into compliance with this Part and provides reasonable assurance that it will fully comply with this Part. An elementary or secondary school or school system which is unable to file an assurance of compliance with this Part shall be restored to full eligibility to receive Federal assistance if it files a court order or a plan for desegregation which meets the requirements of this Part and provides reasonable assurance that it will comply with the court order or plan.

(b) Any applicant or recipient adversely affected by an order entered under § 1040.144 may at any time request the Director to restore fully its eligibility to receive Federal assistance. Any request is to be supported by information showing that the applicant or recipient has met the requirements of paragraph (a) of this section. If the Director determines in writing that those requirements have been satisfied, he/she shall restore the eligibility.

(c) If the Director denies the request, the applicant or recipient may submit a written request for a hearing to the Secretary specifying why it believes the official made an error. The applicant or recipient shall be given an expeditious hearing, with a decision on the record, in accordance with rules of procedures issued by the Secretary or his/her designee. The applicant or recipient will be restored to eligibility if it proves at the hearing that it satisfied the requirements of paragraph (a) of this section. While proceedings under this section are pending, the sanctions imposed by the order issued under § 1040.144 shall remain in effect.

Judicial Review

§ 1040.151 Judicial review.

Action taken under section 602 of the Civil Rights Act of 1964 is subject to judicial review as provided in section 603 of title VI of the Civil Rights Act of 1964.

Appendix A

Federal Assistance Programs of the Department of Energy To Which This Part Applies.

1. *Access Permits.*—Atomic Energy Act of 1954, as amended, sections 1, 2, 3 and 161(i), Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2011-13, 2201; and Title I section 104 (c) of the Energy Reorganization Act of 1974, Pub. L. 93-438; 88 Stat 1237; 42 U.S.C. 5814; Department of Energy Organization Act, 42 U.S.C. 7101; Pub L. 95-91

2. *Motion Pictures Film Libraries.*—Atomic Energy Act of 1954, as amended, Pub. L. 83-703, sections 3 and 141(b), (68 Stat. 919), 42 U.S.C. 2013 and 2161; The Energy Reorganization Act of 1974, Pub. L. 93-438, Title I, sections 103 and 107, (88 Stat. 1240), 42 U.S.C. 5817; Department of Energy Organization Act, Pub. L. 95-91, Title I, section 102, and Title III, section 301, (19 Stat. 565), 42 U.S.C. 7101; the National Energy Extension Service Act, Title V, Pub. L. 95-39, (91 Stat. 191), 42 U.S.C. 7001.

3. *Granting of Patent Licenses.*—Atomic Energy Act of 1954, as amended, sections

156 and 161(g); Pub. L. 83-703; 68 Stat. 919, 42 U.S.C. 2186 and 2201; Federal Nonnuclear Energy Research and Development Act of 1974, section 9 (f) (g) (h); Pub. L. 93-577; 88 Stat. 1887; 42 U.S.C. 5908 (f) (g) (h); Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

4. *University Laboratory Cooperative Program.*—Atomic Energy Act of 1954, as amended, section 31 (a) and (b); Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, Section 107, of the Energy Reorganization Act of 1974; Pub. L. 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

5. *Facility Training Institutes, Short Courses, and Workshops on Energy and Environmental Subjects.*—Atomic Energy Act of 1954, as amended, section 31 (a) and (b); Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, section 107, of the Energy Reorganization Act of 1974; 42 U.S.C. 7101; Pub. L. 93-438; 88 Stat 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

6. *Reactor Sharing and Fuel Assistance.*—Atomic Energy Act of 1954, as amended, section 31 (a) and (b), Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, section 107, of the Energy Reorganization Act of 1974; Pub. L. 93438, 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

7. *Traineeships for Graduate Students in Energy Related Fields.*—Atomic Energy Act of 1954, as amended, sections 31 (a) and (b); Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, section 107, of the Energy Reorganization Act of 1974; Pub. L. 93-458; 88 Stat. 1240; 42 U.S.C. 5817; Pub. L. 93-409, section 12(a); Pub. L. 94-163 section 337; Pub. L. 93-577, section 4(d); Pub. L. 93-275, section 5; Pub. L. 95-39, Title V, section 502 (7); Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

8. *Energy Related Laboratory Equipment Grants.*—Atomic Energy Act of 1954, as amended, section 31 (a) and (b); Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, section 107, of the Energy Reorganization Act of 1974; Pub. L. 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

9. *Information Services Exhibits, Public Speakers Publications, Reference and Analysis.*—Atomic Energy Act of 1954, as amended, sections 3 and 141b; Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2013 and 2161; and Title I, section 107, of the Energy Reorganization Act of 1974; Pub. L. 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

10. *Payments in Lieu of Property Taxes.*—Atomic Energy Act of 1954, as amended, section 168; Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2208; and Title I, section 107, of the Energy Reorganization Act of 1974; Pub. L. 93-438, 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

11. *Radiological Emergency Assistance.*—Atomic Energy Act of 1954, as amended, Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2011 et seq.; and Title I, section 107, of the Energy Reorganization Act of 1974; Pub. L. 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

12. *Nuclear Industry Seminars.*—Atomic Energy Act of 1954, as amended, section 141 (b); Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2161, and Title I, section 107, of the Energy Reorganization Act of 1974; Pub. L. 93-438, 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

13. *Work Experience.*—Atomic Energy Act of 1954, as amended, section 3, Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2013; and Title I, section 107, of the Energy Reorganization Act of 1974; Pub. L. 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act; 42 U.S.C. 7101; Pub. L. 95-91.

14. *Citizens: Workshops.*—Atomic Energy Act of 1954, as amended, Pub. L. 83-703, section 3 and 141 (b), 68 Stat. 919; 42 U.S.C. 2013 and 2161; the Energy Reorganization Act of 1974, Pub. L. 93-438, Title I, section 103 and 107, 88 Stat. 1240; 42 U.S.C. 5817, Department of Energy Organization Act, Pub. L. 95-91, Title I, section 102, and Title III, section 301, 91 Stat. 565; 42 U.S.C. 7101; the National Energy Extension Service Act, Title V, Pub. L. 95-39, 91 Stat. 191; 42 U.S.C. 7001.

15. *Research and Development in Energy Conservation.*—Atomic Energy Act of 1954, as amended, section 31; Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, section 107, of the Energy Reorganization Act of 1974; Pub. L. 93-438; 88 Stat. 1240; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

16. *Energy Related Inventions.*—Section 14 of the Federal Non-Nuclear Energy Research and Development Act of 1974; Pub. L. 93-577; Stat. 1894; 42 U.S.C. 5913; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

17. *Research and Development Fission, Fossil, Solar, Geothermal, Electric and Storage Systems, Magnetic Fusion.*—Amendments to the Energy Reorganization Act of 1974 and the Atomic Energy Act of 1954; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

18. *Energy Information Administration Clearinghouse (EIAC).*—Department of Energy Organization Act, section 205; Pub. L. 95-91.

19. *National Energy Information Center (NEIC).*—Federal Energy Administration Act of 1974, as amended, section 20(a) (4); Pub. L. 93-175; 15 U.S.C. 779; Department of Energy Organization Act, section 301; Pub. L. 95-91.

20. *Grants for Offices of Consumer Services.*—Title II, section 205 of the Energy Conservation and Production Act, Pub. L. 94-385; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

21. *State Energy Conservation Program.*—Title III, sections 361-366, Part C of the Energy Policy and Conservation Act, Pub. L. 94-163; 42 U.S.C. 6321; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

22. *Weatherization Assistance Program for Low Income Persons.*—Title IV, Part A of the Energy Conservation and Production Act, Pub. L. 94-385; 42 U.S.C. 6861-6870; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

23. *Supplemental State Energy Conservation Program.*—Title IV, sections 432(a), Part B of the Energy Conservation and Production Act of 1976, Pub. L. 94-385; 42 U.S.C. 6801 *et. seq.; Department of Energy Orgdnization Act, 42 U.S.C. 7101; Pub. L. 95-91.*

24. *Public Education in Energy.*—Atomic Energy Act of 1954, as amended, sections 31(a) and 31(b); Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, section 107 of the Energy Reorganization Act of 1974; Pub. L. 93-458; 88 Stat. 1240; 42 U.S.C. 5817; Pub. L. 93-409, section 12(a); Pub. L. 94-163, section 337; Pub. L. 93-577, section 4(d); Pub. L. 93-275; section 5; Pub. L. 95-39, Title V, section 502 (7); Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

25. *Special Studies and Projects in Energy Education and Training.*—Atomic Energy Act of 1954, as amended, sections 31(a) and 31(b); Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, section 107 of the Energy Reorganization Act of 1974; Pub. L. 93-458; 88 Stat. 1240; 42 U.S.C. 5817; Pub. L. 93-409, section 12(a); Pub. L. 93-163, section 337; Pub. L. 93-577, section 4(d); Pub. L. 93-275, section 5; Pub. L. 95-39, Title V, section 502 (7).

26. *Research and Development in Biomedical and Environmental Sciences.*—Atomic Energy Act of 1954, as amended, section 31; Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2051; Title I, Sec. 107, of the Energy Reorganization Act of 1974; Pub. L. 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

27. *Preface (Pre-Freshman and Cooperative Education for Minorities In Engineering).*—Atomic Energy Act of 1954, as amended, sections 31(a) and 31(b); Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, section 107 of the Energy Reorganization Act of 1974; Pub. L. 93-458; 88 Stat. 1240; U.S.C. 5817; Department of Energy Organization Act, Pub. L. 95-91, section 102 and 203; Pub. L. 93-409, section 12(a); Pub. L. 94-163, section 337; Pub. L. 93-577, section 4(d); Pub. L. 93-275, section 5; Pub. L. 95-39, Title V, section 502 (7).

28. *Materials Allocation.*—Section 104, Energy Policy and Conservation Act (EPCA), section 101(c) Defense Production Act of 1950, as amended (DPA), 50 U.S.C. 2071(c), section 7, Executive Order 11912, April 13, 1976. Defense Mobilization Order No. 13, September 22, 1976, 41 FR 43720; Department of Commerce, Bureau of Domestic Commerce, Delegation 4, 41 FR 52331, MA Regulations 10 CFR 216; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

29. *Basic Energy Sciences, High Energy and Nuclear Physics, and Advanced Technology and Assessment Projects.*—Atomic Energy Act of 1954, as amended, section 31; Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, section 107, of the Energy Reorganization Act of 1974; Pub. L. 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act; 42 U.S.C. 7101; Pub. L. 95-91.

30. *Energy Extension Service.*—National Energy Extension Service Act; Title V, Pub. L. 95-39; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

[FR Doc. 78-32166 Filed 11-13-78; 8:45 am]

federal register

THURSDAY, NOVEMBER 16, 1978

PART VI

DEPARTMENT OF TRANSPORTATION

Coast Guard

■

COMMERCIAL DIVING OPERATIONS

General Provisions

[4910-14-M]

Title 46—Shipping

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 76-009]

PART 197—GENERAL PROVISIONS

Commercial Diving Operations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is issuing regulations governing commercial diving operations from vessels and facilities including vessels required to have a Certificate of Inspection; deepwater ports; and artificial islands, installations, other devices, or otherwise related to activities on the Outer Continental Shelf. Commercial diving exposes individual divers to many hazardous situations that can and have caused marine casualties. These regulations prescribe safety and health standards for commercial diving operations.

EFFECTIVE DATE: February 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Commander Peter T. Muth, Manager, Underwater Sefety Project (G-MP-3/USP/82), Room 8234, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-2307.

SUPPLEMENTARY INFORMATION: The Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) on August 11, 1975 (40 FR 33681), proposing to amend chapter I of title 46 of the Code of Federal Regulations (CFR) by adding a new subchapter prescribing marine occupational safety and health standards for vessels and facilities that are under Coast Guard jurisdiction. In this ANPRM the Coast Guard proposed to regulate all working conditions and work places under Coast Guard jurisdiction if they are determined to be hazardous to employees, and if the Coast Guard determines that the hazards encountered can be reduced or eliminated by the promulgation of effective regulations.

The Occupational Safety and Health Administration (OSHA), Department of Labor, published an announcement in the FEDERAL REGISTER on October 22, 1975 (40 FR 49123), that it would hold an informal fact-finding hearing on commercial diving operations. The Coast Guard participated in this informal hearing that was conducted in Washington, D.C. on November 11 through 14, 1975.

On June 15, 1976 OSHA published a 6-month Emergency Temporary Standard (ETS) for commercial diving in the FEDERAL REGISTER (41 FR 24272). A Memorandum of Understanding (MOU), covering the relationship between OSHA and the Coast Guard during the 6-month period of the ETS and also during the period of development of final Coast Guard regulations for commercial diving, was signed on June 9, 1976, by the Commandant of the Coast Guard and the Assistant Secretary of Labor for Occupational Safety and Health. The text of the MOU was published with the ETS (41 FR 24291) and contained a provision terminating the MOU "upon the effective date of the Coast Guard standards * * * pertaining to diving operations." The ETS was withdrawn by OSHA on November 5, 1976 (41 FR 48969).

On July 15, 1976, the Coast Guard published an ANPRM in the FEDERAL REGISTER (41 FR 29151) stating that it was considering new regulations prescribing occupational safety and health standards for commercial diving. The Coast Guard invited specific public advice and recommendations on nine enumerated areas, and any general comments to assist it in developing new occupational safety and health regulations for commercial diving in areas of Coast Guard jurisdiction.

During August 1976, the OSHA Advisory Committee on Construction Safety and Health met to discuss materials and information relating to the occupational safety and health aspects of commercial diving operations and to make recommendations to OSHA. The Coast Guard participated in this public proceeding.

On November 5, 1976 OSHA published a Notice of Proposed Rulemaking (NPRM) and Notice of Public Hearings in the FEDERAL REGISTER (41 FR 48950) covering commercial diving operations. Pursuant to the MOU between the Coast Guard and OSHA, the Coast Guard published a Notice in the FEDERAL REGISTER (41 FR 48969 and 41 FR 49208) joining OSHA in the public hearings, scheduled for December 16 through 17, 1976, in New Orleans, to receive public comments for the Coast Guard on the substance of the OSHA proposed standards. During the joint public hearings (December 16 through 21, 1976, and January 10 through 14, 1977) the Coast Guard gave the public an opportunity to comment on Coast Guard regulatory concepts that would be substantively similar to the OSHA proposed standards for commercial diving operations.

On July 22, 1977 OSHA published its final commercial diving standard in the FEDERAL REGISTER (42 FR 37650). Under section 4(b)1 of the Occupational Safety and Health Act of 1970, the OSHA standards do not apply to those diving operations over which the Coast Guard exercises its statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

On November 10, 1977, the Coast Guard published a NPRM in the FEDERAL REGISTER (42 FR 58712), with corrections on November 21, 1977 (42 FR 59763), governing commercial diving operations from vessels and facilities subject to Coast Guard jurisdiction. In developing this proposal, the Coast Guard met at various times beginning in 1975 with members of the National Offshore Operations Industry Advisory Committee (NOOIAC). NOOIAC submitted its recommendations to the Coast Guard on June 15, 1977. These recommendations, along with the comments received as a result of the ANPRMs and joint OSHA/CG rulemaking activities, were taken into consideration for the purpose of the NPRM. Pursuant to the MOU the proposed regulation was considered to be substantively similar to the final OSHA commercial diving standard.

The public comment period for the NPRM remained open for written comments until December 27, 1977. A total of 29 written comments were received during the comment period. Commentors included private individuals; companies representing diving contractors, insurance consultants, manufacturers, a deepwater port, offshore exploration; industry and trade associations; five national recreational and sport diving training organizations; and a labor union.

As a result of these written comments, the regulations were revised in part. Many revisions have been made to the regulations to improve clarity without changing the substance of the regulations. Those changes that significantly alter the proposed regulations and those items that received considerable comment and have not been revised and discussed below.

This rule has been reviewed under the Department of Transportation's "Policies Procedures for Simplification, Analysis, and Review of Regulations" (43 FR 9582, March 8, 1978). An evaluation has been prepared, and has been included in the public docket.

DRAFTING INFORMATION

The principal persons involved in drafting this proposal are: Commander Peter T. Muth, Project Manager, Office of Merchant Marine Safety and Mr. Edward J. Gill, Jr., Project Attorney, Office of the Chief Counsel.

Discussion of Major Comments

Preamble

Although the preamble to the proposed rule indicated that the proposal did not address the qualifications of individual dive team members, including the medical requirements, with the reasons therefor, two commentors made suggestions and recommendations in this area. One commentor commended the Coast Guard for its position on medical qualifications while suggesting that rulemaking for other personnel qualifications be initiated. The other commentor suggested that, as a minimum, the Coast Guard incorporate into this final rule the diving medical guidelines including the psychological screening requirements of the U.S. Navy. The Coast Guard agrees that the qualification of individual dive team members, especially the medical requirements, are important, and has noted that the commercial diving industry, subject to the jurisdiction of the Coast Guard, has established a school to train commercial divers; has physicians trained and experienced in hyperbaric medicine either employed full time or on-call by individual companies and the commercial diving school; has developed and vigorously follows an on-the-job training program encompassing all facets of commercial diving activities; and has established safety and health programs within most individual companies. It is the intent of the Coast Guard to regulate commercial diving operations on vessels and facilities subject to the jurisdiction of the Coast Guard to the extent necessary to insure an acceptable level of personnel safety and health. After careful reconsideration, the Coast Guard has reaffirmed its prior determination that it will not regulate in these areas at this time; however, the Coast Guard intends to publish an Advance Notice of Proposed Rulemaking concerning the qualifications of dive team members including medical requirements.

General

Several commentors were unsure about the application of this regulation to one atmosphere observation bells, suits, or submersibles. By the definition of "diver," those applications are not covered. The definition of "PVHO" was rewritten to clarify any possible misunderstanding by specifically excluding one atmosphere devices and to preclude a potential erroneous interpretation that the exterior pressure criteria of the ASME Code and ASME PVHO-1 was not required. All the requirements of ASME PVHO-1 are mandatory for new PVHO's. The requirements of 46 CFR 54 or as an alternative, Section VIII, Division 1 of the ASME Code, are, and have been, mandatory for existing PVHO's and include external pressure criteria. The requirements of ASME PVHO-1 are not mandatory for existing PVHO's under § 197.328(b).

Two commentors expressed concern over the exemption from the regulations of diving operations for marine scientific research and development purposes being limited to those conducted by educational institutions. The commentors suggested the words "by educational institutions" be deleted. The Coast Guard does not agree and foresees considerable difficulty differentiating between commercial diving operations for profit under the guise of research and development, and diving operations for purely marine scientific research and development purposes unless the limitation "by educational institutions" is retained.

The regulations allow the Coast Guard to accept substitutes for equipment, materials, apparatus, arrangements, procedures, or tests required by this subpart if the substitute provides an equivalent level of safety. Specific wording permitting equivalent substitutes has been removed from all sections of this rule except in the standard for helium, § 197.340(h). This permits the diving supervisor to determine equivalency to the required standards for helium when helium is obtained outside the United States without applying to the Commandant of the Coast Guard. This does not permit the diving supervisor to use helium meeting a lesser standard as a breathing gas, but only helium meeting the published standard.

Seventeen commentors offered 90 suggestions including numerous alternatives and alternative wording for § 197.208 on the designation of the person-in-charge and the other sections impacted by this section. These comments were accepted, in part, and the regulation has been completely rewritten to clearly define and assign responsibility where it belongs. This necessitated the addition of definitions for "diving supervisor" and "diving installation" and the addition § 197.210 and 197.404. The person-in-charge remains responsible for the vessel or facility, its operation and safety, and the records and reports required by statute or regulation. In addition, the person-in-charge must coordinate the activities on and of the vessel or facility with the diving supervisor so as not to endanger the dive team conducting diving operations. The diving supervisor is in charge of the planning and execution of the commercial diving operation and is responsible for the diving installation, the safety and health of the dive team, and the records and reports required. In addition, the diving supervisor must immediately notify the person-in-charge when a diving accident or casualty occurs, must keep the person-in-charge informed, and coordinate any changes to the planned diving operation with the person-in-charge.

Equipment

The equipment specifications and equipment requirements apply to each vessel or facility conducting commercial diving operations having a portable diving installation or having an installed diving installation. Nothing in this subpart amends or supercedes the requirements contained in other parts of titles 33 and 46 CFR for the design, plan approval, construction, certification, and inspection required of those vessels or facilities subject to this subpart conducting commercial diving operations and having installed diving systems. Therefore, permanently installed diving installations aboard certificated vessels must comply with 46 CFR 54 regarding pressure vessels, with 46 CFR 56 regarding pressure piping, and with 46 CFR 110 through 113 regarding electrical systems in addition to complying with this subchapter.

Three commentors recommended modification of the requirement that breathing supply hoses be made of kink-resistant material to allow use of synflex hose. The Coast Guard agrees that the wording of the proposal did not allow the use of synflex hose nor properly reflect what was intended. Section 197.312(a)(4) has been modified to clarify that breathing supply hoses are to resist kinking, and that the method of achieving this can be either by initial design and construction of the hose, or by supporting the hose in such a manner as to make it resistant to kinking.

Two comments were received on § 197.312(b)(2). The Coast Guard feels that the present wording clearly shows that markings are required only on diver and open bell umbilicals, not closed bell umbilicals, and that further clarification is unnecessary.

Paragraphs 197.314 (a)(1) and (c)(4) were modified to clarify intent and to specify the contents, dimensions, and packaging of the medical kit in response to several comments received.

In response to a commentor's question, the Coast Guard modified § 197.314(b) to clarify the two-way communications system requirement. This change permits substitution of the vessel or facility ship-to-shore, two-way communications system for the system required by this section if it is readily available to obtain emergency medical assistance.

Three commentors noted that the depth requirement as to when a decompression chamber was required differed between the Coast Guard and

OSHA standards. Two commentors did not offer an opinion as to the depth when it should be required, but recommended that the two agencies agree to the same figure of either 130 fsw or 100 fsw. The other commentor proposed adoption of 66 fsw with the no-decompression limit, or adoption of 100 fsw with the no-decompression limit and an additional requirement of having a decompression chamber any time a diver is working in a "contained space" where there is a chance of becoming "hung-up." This commentor also noted that a secondary breathing gas supply was required when a decompression chamber is required.

The requirement to have a decompression chamber at the dive location also requires additional associated equipment for the chamber (i.e., handling gear to load, unload, and position the decompression chamber; hoses and piping; a secondary breathing gas supply; a larger primary breathing gas supply; and breathing gases for treatment of decompression sickness); additional personnel to load, unload, and operate the decompression chamber and associated equipment; a substantially larger dive location capable of providing the extra space needed and supporting the additional weight; and a method of transportation with at least a fivefold, increased weight-handling capability over a dive not requiring a decompression chamber. Additionally, the requirements for a standby diver, individual surface tending, and more detailed record keeping are based on the determination of where the increased risks to a diver exist.

The incidence rate of decompression sickness among all divers diving within the no-decompression limit at depths less than 130 fsw is very small. Gas embolism can occur at almost any depth, but occurs more frequently at depths less than 66 fsw. (This may be because most air dives take place at depths less than 66 fsw.) Also, the incidence rate occurs more frequently when using SCUBA equipment. However, among experienced divers the incidence rate of gas embolism is small.

It is the opinion of the Coast Guard, based on a review of the entire record as set forth in the preamble of the NPRM, the diver's work environment, and a review of the experience of hundreds of thousands of air dives by military, civilian, governmental, commercial, sport, and recreational, and scientific divers all using the U.S. Navy air tables, that the requirement for a decompression chamber need not be set at a depth less than 130 fsw to protect against potential decompression sickness. The Coast Guard feels a 20 fsw requirement in lieu of a 66 fsw or 100 fsw requirement is not an unreasonable depth to require equipment for treatment of gas embolism. However, a review of the record and comments cited in the NPRM and the experience of many dives does not support protecting commercial divers (professionals) for possible gas embolism by providing additional personnel and equipment for no-decompression dives at depths less than 130 fsw.

After careful reconsideration and reexamination of the comments and records mentioned above, the Coast Guard reaffirms the 130 fsw decompression chamber requirement. However, the Coast Guard agrees with the general philosophy of the commentors regarding a single Federal standard for the same marine activity and has been discussing this subject with OSHA to resolve this issue. Both the Coast Guard and OSHA have determined that additional public input on this subject is desirable and both agencies intend to request additional public comment in a future notice in the FEDERAL REGISTER.

In answer to a commentor, the requirement of § 197.314(c)(5) to have a "capability" could be discharged by having specialized equipment such as a Stoke's litter with the personnel needed to carry it available or by having sufficient personnel to assist an injured diver into the decompression chamber. The wording of this section allows future equipment development to occur that may replace the most common present system of having "sufficient personnel" as long as the objective of getting the injured diver inside the decompression chamber is met.

One commentor recommended that dives at depths less than 40 fsw, or those not involving decompression, be exempt from the requirements of § 197.318. The Coast Guard disagrees. Neither ascent and descent rates nor bottom time can be determined without a timekeeping device. The diving supervisor may not be able to determine whether a diver has been at depths that require a decompression obligation without a gage available indicating diver depth (i.e., a diver working at 28 fsw for 6 hours vice at 32 fsw for 6 hours). Without the combined information of bottom time and depth available to the diving supervisor, the safety and health of the diver may be in jeopardy.

Many commentors objected to, and offered rewording for, "be made of corrosion-resistant material" where required for diving ladders, stages, and open bells (§§ 197.320 and 197.334). The Coast Guard agrees that the wording of the proposal was too restrictive and has rewritten those requirements. This wording allows either construction using corrosion-resistant material, or application of anti-corrosion coatings to protect the structural integrity of the device.

Two commentors suggested that the requirement of § 197.320(b)(3) be modified to allow the use of a diving ladder instead of a diving stage under certain conditions. The Coast Guard disagrees. Divers diving at depths deeper than 130 fsw, or outside the no-decompression limits, are more likely to be tired and need the additional assistance a diving stage affords over a diving ladder. A diving stage also provides a haven during in-water decompression stops. If because of conditions at the dive site, the use of a diving stage would likely cause an injury, § 197.202(b) allows a deviation from this requirement. If the use of the diving stage is unreasonable or impractical, § 197.206(b) provides that the Commandant of the Coast Guard may permit the use of alternative equipment or procedures that insure a degree of safety consistent with the minimum standard afforded by a diving stage.

One commentor suggested that § 197.326(b) be amended to allow ball valves to be used as PVHO pressure boundary shutoff valves in oxygen systems. The Coast Guard agrees and has amended the proposal accordingly.

Section 197.328(d)(3) has been changed in response to one commentor to clearly indicate that overpressurization of the PVHO is intended to be protected by this requirement and not the pressure piping. Pressure piping is protected by the pressure relief devices required by the ANSI Code.

The requirement that each PVHO must have a pressure sealing hatch (§ 197.328(c)(4) of the proposal) has been deleted. This requirement did not add anything that was not already required by the design Codes and was a point of confusion to two commentors.

Three commentors recommended modifications to the requirement for PVHO two-way voice communications systems. These comments were accepted, in part, and § 197.328(d) (6) and (7) and § 197.332(m) have been rewritten to clearly specify intent and set forth the requirements. The Coast Guard considers voice communications between the diving supervisor and occupants of a PVHO, between occupants in separately pressurized compartments of the same PVHO, and between the occupant of a closed bell and a diver in the water being supported from that closed bell as the minimum standards for the safety and health of the dive team members. Additionally, if two separate PVHO's are designed to mechanically couple and become in effect one PVHO, these two-way voice communications system requirements apply when the PVHO's are mechanically coupled. The Coast

Guard did not intend to have redundant sound-powered communications systems in decompression chambers, and permits only one two-way voice communications system in a decompression chamber if the system is sound-powered. The configuration and operation of the required communications system is not specified, allowing any system that provides the required two-way voice contacts.

Four commentors pointed out that internal pressure gages were not required for PVHO's unless the PVHO atmosphere can be controlled internally. The Coast Guard agrees and has rewritten § 197.328(d)(7).

The Coast Guard has rewritten the viewport requirements of § 197.328(d)(8) and (9). As previously worded, it could have been interpreted to require that all occupants of dual- or multiple-lock PVHO's had to be seen from the exterior through one viewport, even if the PVHO has more than one viewport. In most situations, this would be impossible. The intent of the regulation is to require sufficient viewports to allow observation of all occupants from the exterior. If a PVHO is designed such that a single viewport would allow observation of all occupants, that design would satisfy this requirement.

Three commentors made suggestions concerning the requirement for a fire extinguisher inside a PVHO. The Coast Guard reviewed the causes of several PVHO fires, and has amended the proposed regulations to require a means of extinguishing a fire in the interior. Past experience indicates that fire prevention is most important and can be enhanced by keeping combustible materials, sources of heat and sparks, and all nonessential or potentially hazardous equipment, including electrical systems, to an absolute minimum inside a PVHO. Known combustible materials or sources of ignition required inside a PVHO should be isolated from the PVHO atmosphere and purged with inert gas, where possible, or maintained in a area easily accessible by an occupant to facilitate extinguishing a fire. Localized fires that have been combatible in the past have been extinguished with water or sand.

Two commentors recommended that § 197.328(c)(19) of the NPRM be amended to exempt additional electrical equipment inside PVHO's such as communications speakers and medical measurement instrumentation. Electrical systems, besides being a potential shock hazard, can present a source of ignition as well as the fuel required for combustion. Additionally, electrical shock hazards and possible galvanic action of the PVHO need to be considered when designing and maintaining interior electrical systems. The Coast Guard has carefully reviewed the proposed requirements and the comments received in the context of present-day equipment available, and has rewritten § 197.328(d)(18).

One commentor requested clarification of § 197.330(a)(6). This requirement assists surface personnel in locating and retrieving a closed bell after the umbilical has been severed. The emergency locating device required is not limited to the following but could be, active (i.e., an acoustical pinger), passive (i.e., a sonar reflector or target), or some other device (i.e., a surface buoy with attaching line releasible by either the closed bell occupants and/or remotely from the surface).

Three commentors suggested alternative language and alternatives to the requirements for a 12-hour breathing gas supply independent of the surface. The Coast Guard agrees, in part, with the suggestions and has rewritten § 197.330(a)(8). This revision recognizes that scrubbing and recirculating of breathing gases is an alternative to an independent breathing gas supply of sufficient volume and pressure to last for 12 hours. Also, having a sufficient breathing gas supply does not by itself provide life support as other considerations must be taken into account (i.e., thermal protection). The revision also allows a reduced life support capability if there are two independent retrieval systems for the closed bell.

One commentor suggested that § 197.332(d) be reworded to account for shipping dogs. Shipping dogs are constructed to be operated from only one side of a man-way or hatch, are never used to obtain a pressure seal, and are only used during shipping to prevent damage to the decompression chamber. When the decompression chamber is occupied, shipping dogs are removed or disabled by securing them out of the way. The Coast Guard agrees and has revised this requirement.

The proposed illumination levels for the interior of a decompression chamber were addressed by five commentors. Two commentors suggested deletion of the requirement as illumination was already covered by "PVHO-General" requirements. Two commentors expressed concern regarding fire prevention. Comments also addressed the "convenience" aspects of bunk reading lights. The Coast Guard agrees, in part, with the philosophy expressed; however, the lighting requirements addressed within the decompression chamber requirements are in addition to "General" PVHO illumination requirements. The general PVHO illumination requirement addressed work and operating conditions. The decompression chamber interior illumination requirement is directed not toward "convenience items" but being able to visually observe, treat, medically diagnose, and medically assist, if necessary, occupants undergoing decompression or treatment for decompression sickness. Therefore, the Coast Guard has rewritten § 197.332(e) for clarity.

The requirement for compressed gas cylinders, § 197.338(e), has been modified to allow the use of cylinders designed and constructed under the requirements of Part 54 of this Chapter, which requires a greater design safety factor for pressure vessels aboard certificated vessels than the standard of 49 CFR 178 Subpart C.

Two commentors recommended that § 197.346(b) be modified to allow a diver to select equipment he will use for a particular dive. The Coast Guard agrees in part, and has modified this requirement by requiring that a helmet cushion and weighted shoes be provided to the diver, but has not required them to be worn by the diver. When using a heavy-weight diving outfit, the absence of weighted shoes could pose an unintended risk to a diver's safety under some conditions; however, this risk may be avoided by the use of leg or ankle weights.

One commentor observed that the requirements of § 197.346(d)(5) regarding a "life-line" and a "communications cable" can be met in some cases by a communications cable in the hose group that has a breaking strength equal to or exceeding that required of a life-line. The Coast Guard agrees, and under such a circumstance would not require a separate life-line.

One commentor suggested that § 197.346(f) be modified to also exclude from the diver-carried reserve breathing gas requirement, diving with a stage nearby having a sufficient supply of breathing gases or a closed or open bell. The Coast Guard disagrees. An inexhaustable supply of breathing gas just beyond the immediate reach of a diver in distress may never be used. A reserve breathing gas supply, when required, should always be within the immediate reach of a diver, except when it becomes a greater hazard to the diver's safety than the diver not having it. In such a case, alternatives, such as the commentor suggested, should be considered.

OPERATIONS

One commentor requested clarification of what was meant by the post dive requirement in the proposal to check the physical condition of the diver. This has been clarified in § 197.410(a)(7)(i).

Five commentors suggested the requirement proposed in § 197.420(a) to have an operations manual prepared for each vessel or facility from which diving operations are conducted be modified. The Coast Guard agrees, in part, and with the rewriting of responsibilities has revised this requirement so that the diving supervisor provides to the person-in-charge and the dive team an operations manual. The intent of the proposed requirement to have an operations manual tailored to a specific situation is retained by requiring certain modifications to be made in writing.

SPECIFIC DIVING MODE PROCEDURES

Two commentors proposed that the depth requirement for the use of a closed bell (§ 197.434(d) of this rule) be changed from 300 fsw to 350 fsw. The Coast Guard disagrees. The Coast Guard, however, realizes that there may be specific commercial diving operations at depths greater than 300 fsw where the use of a closed bell may not be indicated and feels that § 197.206(b) allows a viable alternative.

One commentor pointed out that the proposed requirement in § 197.434(f)(2), that a standby diver be available one hour before the return of a closed bell to the dive location during saturation diving is impractical. An operational emergency could arise at any time that could require returning the closed bell to the dive location. The Coast Guard agrees and has rewritten the proposed requirements as § 197.434(g). The standby diver requirement for closed bell retrieval during saturation diving has been removed. A requirement that a member of the topside crew be diver-qualified and available has been substituted.

One commentor requested clarification of the prohibition against liveboating at night. The intent was to prohibit liveboating operations when the direction that the umbilical tends in the water, or when the "bubbles" from the diver, are not visible to the dive team member at the dive location continuously tending the diver. Also, the vessel from which liveboating operations are being conducted should be visible to other vessels transiting the area for the safety of the diver. This clarification has been made by prohibiting liveboating from 1 hour after sunset to 1 hour before sunrise or during periods of restricted visibility as defined in a new § 197.436(b).

Two commentors proposed that the depth limitation for liveboating be changed from 200 fsw to 250 fsw. The figure of 200 fsw appearing in § 197.436(a) was an unnoticed, typographical error appearing in the NPRM. The Coast Guard intended that there be a limitation of 220 fsw which is compatible with the 220 fsw bell requirement. The Coast Guard disagrees with changing the limitation for liveboating from 220 to 250 fsw. However, § 197.206(b) provides an alternative when there is a specific commercial diving operation that requires liveboating at depths greater than 220 fsw.

One commentor felt the requirement for a diver pick-up boat during liveboating operations was unnecessary as the vessel from which liveboating is supported should be able to make the diver pick-up. The commentor felt a second vessel might exacerbate the hazard to the diver in the water. However, under the worst situation, the vessel is most likely to have its screws fouled with a severed umbilical and be dead-in-the-water. Further, liveboating by definition could be conducted from a barge. Diver pick-up, in either case, might be difficult without the required pick-up boat, if possible at all. The Coast Guard has retained the requirement for a boat for diver pick-up in § 197.436(a)(4) thereby allowing the person-in-charge the option to utilize his vessel or the boat for picking up the diver in distress, whichever under the specific circumstances would be more appropriate.

PERIODIC TESTS AND INSPECTIONS OF DIVING EQUIPMENT

One commentor recommended that the words "repair or modification" in § 197.450(a) be changed to "overhaul" because there are many repairs or modifications that may not affect the quality of the breathing gas output of an air compressor. The same argument could be used regarding the word "overhaul." The tests required are not only for quality but also for quantity. The tests required are to be performed after every repair or modification to the compressor (such as, the speed at which it is driven, pressure boundaries, intake and exhaust piping arrangements, etc.) which might affect the quantity and/or quality of the compressor output. Retightening a foundation mounting nut of the compressor or straightening a bent dip stick on the prime mover are not intended to be considered "repairs" under this section.

One commentor suggested that a Compressed Gas Association (CGA) pamphlet, G-4.1 entitled "Cleaning Equipment for Oxygen Service," be referenced in § 197.452 and other CGA pamphlets be referenced elsewhere in this regulation. The Coast Guard disagrees. The Coast Guard, in preparing the NPRM, considered all CGA standards through December 1976 and found many of the standards had already made their way into regulations. Some of these regulations have been referenced in this subpart and thereby incorporated (i.e., 49 CFR 173.34 incorporated CGA pamphlet C-6, 1968 edition, and CGA pamphlet C-8, 1972 edition). The Coast Guard noted during its review of the CGA standards and publications that they were not developed with human life support under hyperbaric conditions as the main objective and therefore in some areas were neither complete nor acceptable.

One commentor recommended the exclusion of cylinders from the requirements of § 197.462 since they would be tested according to the appropriate DOT regulations. The Coast Guard disagrees. It is not the Coast Guard's intention to subject any pressure vessel to duplicate inspection and testing requirements. The "appropriate DOT regulations" apply to cylinders in interstate commerce and may not cover after purchase a significant percentage of cylinders used for diving. If a cylinder is inspected and tested annually with a hydrostatic test every fifth year in accordance with 49 CFR 173.34, it meets the requirements of this section.

One commentor expressed concern regarding the leak test requirement. In response, the Coast Guard has rewritten § 197.462(g) to set out the leak test procedures.

RECORDS

The revision of this regulation previously discussed regarding the person-in-charge and diving supervisor, required major revision to this portion of the regulations. The official logbook (Coast Guard form CG-706) required by statute is retained. Those vessels or facilities not required to have an official logbook by 46 U.S.C. 201 are required to have a logbook, as is the diving supervisor. The size, shape, and form of the logbook is left to the discretion of the person-in-charge or diving supervisor. The entries of the person-in-charge in either the official logbook or logbook have been reduced in quantity.

The entries required of the diving supervisor to be entered in the supervisor's logbook are much more detailed. They include entries similar to those required to be entered by the person-in-charge, specific information about the dive and divers, a record of the diving activity, equipment history including testing, etc. The Coast Guard recognizes that many of the records and entries required are not kept at the dive location. The Coast Guard does not require copying the information into the logbook or duplicating these existing records, as long as an entry is made in the diving supervisory's logbook at the dive location indicating where the records are physically available.

Several commentors suggested that form CG-2692 was not indicated for a diving casualty as required by § 197.486(b) but rather for a vessel casualty not involving diving. The Coast Guard agrees and has deleted this requirement. Section 197.486 was also rewritten to clarify that form CG-924E is required only when the dive location is a vessel, and that a written narrative report is required when the dive location is a facility.

In consideration of the foregoing, Chapter I of Title 46 of the Code of Federal Regulations is amended as follows:

PART 54—PRESSURE VESSELS

1. By adding a new § 54.01-17 to read as follows:

§ 54.01-17 Pressure vessel for human occupancy (PVHO).

Pressure vessels for human occupancy (PVHO's) must meet the requirements of subpart B (Commercial Diving Operations) of part 197 of this chapter.

PART 56—PIPING SYSTEMS AND APPURTENANCES

2. By adding a new § 56.50-110 to read as follows:

§ 56.50-110 Diving support systems.

(a) In addition to the requirements of this part, piping for diving installations which is permanently installed on the vessel must meet the requirements of subpart B (Commercial Diving Operations) of part 197 of this chapter.

(b) Piping for diving installations which is not permanently installed on the vessel need not meet the requirements of this part, but must meet the requirements of subpart B of part 197 of this chapter.

(c) Piping internal to a pressure vessel for human occupancy (PVHO) need not meet the requirements of this part, but must meet the requirements of subpart B of part 197 of this chapter.

PART 110—GENERAL PROVISIONS

3. By adding a new § 110.05-8 to read as follows:

§ 110.05-8 Electrical systems internal to pressure vessels for human occupancy (PHVO).

Electrical systems internal to a pressure vessel for human occupancy (PVHO) need not meet the requirements of this subchapter, but must meet the requirements of subpart B (Commercial Diving Operations) of part 197 of this chapter.

4. And by adding a new subchapter V, consisting at this time of part 197, subpart B, to read as follows:

SUBCHAPTER V—MARINE OCCUPATIONAL SAFETY AND HEALTH STANDARDS

PART 197—GENERAL PROVISIONS

Subpart A—(Reserved)

Subpart B—Commercial Diving Operations

GENERAL

AUTHORITY: (46 U.S.C. 239; 46 U.S.C. 390b; 46 U.S.C. 391a; 33 U.S.C. 1509(b); 43 U.S.C. 1333(d)(1); 43 U.S.C. 1331 et seq., as amended by Sec. 203 and 208 of Pub. L. 95-372; 46 U.S.C. 395; 46 U.S.C. 375; 46 U.S.C. 391; 46 U.S.C. 392; 46 U.S.C. 416; 49 U.S.C. 1655(b); 49 CFR 1.46 (b) and (s).)

Subpart A—[Reserved]

Subpart B—Commerical Diving Operations

GENERAL

§ 197.200 Purpose of subpart.

This subpart prescribes rules for the design, construction, and use of equipment, and inspection, operation, and safety and health standards for commercial diving operations taking place from vessels and facilities under Coast Guard jurisdiction.

§ 197.202 Applicability.

(a) This subpart applies to commercial diving operations taking place at any deepwater port or the safety zone thereof as defined in 33 CFR 150; from any artificial island, installation, or other device on the Outer Continental Shelf and the waters adjacent thereto as defined in 33 CFR 147 or otherwise related to activities on the Outer Continental Shelf; and from all vessels required to have a certificate of inspection issued by the Coast Guard including mobile offshore drilling units regardless of their geographic location, or from any vessel connected with a deepwater port or within the deepwater port safety zone, or from any vessel engaged in activities related to the Outer Continental Shelf; except that this subpart does not apply to any diving operation—

(1) Performed solely for marine scientific research and development purposes by educational institutions;

(2) Performed solely for research and development for the advancement of diving equipment and technology; or

(3) Performed solely for search and rescue or related public safety purposes by or under the control of a governmental agency.

(b) Diving operations may deviate from the requirements of this subpart to the extent necessary to prevent or minimize a situation which is likely to cause death, injury, or major environmental damage. The circumstances leading to the situation, the deviations made, and the corrective action taken, if appropriate, to reduce the possibility of recurrence shall be recorded by the diving supervisor in the logbook as required by § 197.482(c).

§ 197.204 Definitions.

As used in this subpart:

"ACFM" means actual cubic feet per minute.

"ANSI Code" means the B31.1 American National Standards Institute "Code for Pressure Piping, Power Piping."

"ASME Code" means the American Society of Mechanical Engineers "Boiler and Pressure Vessel Code."

"ASME PVHO-1" means the ANSI/ASME standard "Safety Standard for Pressure Vessels for Human Occupancy."

"ATA" means a measure of pressure expressed in terms of atmosphere absolute (includes barometric pressure).

"Bell" means a compartment either at ambient pressure (open bell) or pressurized (closed bell) that allows the diver to be transported to and from the underwater work site, allows the diver access to the surrounding environment, and is capable of being used as a refuge during diving operations.

"Bottom time" means the total elapsed time measured in minutes from the time the diver leaves the surface in descent to the time to the next whole minute that the diver begins ascent.

"Breathing gas/breathing mixture" means the mixed-gas, oxygen, or air as appropriate supplied to the diver for breathing.

"Bursting pressure" means the pressure at which a pressure containment device would fail structurally.

"Commercial diver" means a diver engaged in underwater work for hire excluding sport and recreational diving and the instruction thereof.

"Commercial diving operation" means all activities in support of a commercial diver.

"Cylinder" means a pressure vessel for the storage of gases under pressure.

"Decompression chamber" means a pressure vessel for human occupancy such as a surface decompression chamber, closed bell, or deep diving system especially equipped to recompress, decompress, and treat divers.

"Decompression sickness" means a condition caused by the formation of gas or gas bubbles in the blood or body tissue as a result of pressure reduction.

"Decompression table" means a profile or set of profiles of ascent rates and breathing mixtures designed to reduce the pressure on a diver safely to atmospheric pressure after the diver has been exposed to a specific depth and bottom time.

"Depth" means the maximum pressure expressed in feet of seawater attained by a diver and is used to express the depth of a dive.

"Dive location" means that portion of a vessel or facility from which a diving operation is conducted.

"Dive team" means the divers and diver support personnel involved in a diving operation, including the diving supervisor.

"Diver" means a person working beneath the surface, exposed to hyperbaric conditions, and using underwater breathing apparatus.

"Diver-carried reserve breathing gas" means a supply of air or mixed-gas, as appropriate, carried by the diver in addition to the primary or secondary breathing gas supplied to the diver.

"Diving installation" means all of the equipment used in support of a commercial diving operation.

"Diving mode" means a type of diving requiring SCUBA, surface-supplied air, or surface-supplied mixed-gas equipment, with related procedures and techniques.

"Diving stage" means a suspended platform constructed to carry one or more divers and used for putting divers into the water and bringing them to the surface when in-water decompression or a heavy-weight diving outfit is used.

"Diving supervisor" means the person having complete responsibility for the safety of a commercial diving operation including the responsibility for the safety and health of all diving personnel in accordance with this subpart.

"Facility" means a deepwater port, or an artificial island, installation, or other device on the Outer Continential Shelf subject to Coast Guard jurisdiction.

"Fsw" means feet of seawater (or equivalent static pressure head).

"Gas embolism" means a condition caused by expanding gases, which have been taken into and retained in the lungs while breathing under pressure, being forced into the bloodstream or other tissues during ascent or decompression.

"Heavy-weight diving outfit" means diver-worn surface-supplied deep-sea dress.

"Hyperbaric conditions" means pressure conditions in excess of surface atmospheric pressure.

"Injurious corrosion" means an advanced state of corrosion which may impair the structural integrity or safe operation of the equipment.

"Liveboating" means the support of a surfaced-supplied diver from a vessel underway.

"Maximum working pressure" means the maximum pressure to which a pressure containment device can be exposed under operating conditions (usually the pressure setting of the pressure relief device).

"No-decompression limits" means the air depth and bottom time limits of appendix A.

"Pressure vessel" means a container capable of withstanding an internal maximum working pressure over 15 psig.

"Psi(g)" means pounds per square inch (gage).

"PVHO" means pressure vessel for human occupancy but does not include pressure vessels for human occupancy that may be subjected to external pressures in excess of 15 psig but can only be subjected to maximum internal pressures of 15 psig or less (i.e., submersibles, or one atmosphere observation bells).

"Saturation diving" means saturating a diver's tissues with the inert gas in the breathing mixture to allow an extension of bottom time without additional decompression.

"SCUBA diving" means a diving mode in which the diver is supplied with a compressed breathing mixture from diver carried equipment.

"Standby diver" means a diver at the dive location available to assist a diver in the water.

"Surface-supplied air diving" means a diving mode in which the diver is supplied from the dive location or bell with compressed breathing air including oxygen or oxygen enriched air if supplied for treatment.

"Surface-supplied mixed-gas diving" means a diving mode in which the diver is supplied from the dive location or bell with a compressed breathing mixture other than air.

"Timekeeping device" means a device for measuring the time of a dive in minutes.

"Treatment table" means a depth, time, and breathing gas profile designed to treat a diver for decompression sickness.

"Umbilical" means the hose bundle between a dive location and a diver or bell, or between a diver and a bell, that supplies the diver or bell with a life-line, breathing gas, communications, power, and heat as appropriate to the diving mode or conditions.

"Vessel" means any waterborne craft including mobile offshore drilling units required to have a Certificate of Inspection issued by the Coast Guard or any waterborne craft connected with a deepwater port or within the deepwater port safety zone, or any waterborne craft engaged in activities related to the Outer Continental Shelf.

"Volume tank" means a pressure vessel connected to the outlet of a compressor and used as an air reservoir.

"Working pressure" means the pressure to which a pressure containment device is exposed at any particular instant during normal operating conditions.

§ 197.205 Availability of standards.

(a) Several standards have been incorporated by reference in this subchapter. The incorporation by reference has been approved by the Director of the FEDERAL REGISTER under the provisions of 1 CFR Part 51.

(b) The standards are available from the appropriate organizations whose addresses are listed below:

(1) American National Standards Institute, 1430 Broadway, New York, N.Y. 10018.

(2) American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, N.Y. 10017.

§ 197.206 Substitutes for required equipment, materials, apparatus, arrangements, procedures, or tests.

(a) The Coast Guard may accept substitutes for equipment, materials, apparatus, arrangements, procedures, or tests required in this subpart if the substitute provides an equivalent level of safety.

(b) In any case where it is shown to the satisfaction of the Commandant that the use of any particular equipment, material, apparatus, arrangement, procedure, or test is unreasonable or impracticable, the Commandant may permit the use of alternate equipment, material, apparatus, arrangement, procedure, or test to such an extent and upon such condition as will insure, to his satisfaction, a degree of safety consistent with the minimum standards set forth in this Subpart.

§ 197.208 Designation of person-in-charge.

(a) The owner or agent of a vessel or facility without a designated master shall designate, in writing, an individual to be the person-in-charge of the vessel or facility.

(b) Where a master is designated, the master is the person-in-charge.

§ 197.210 Designation of diving supervisor.

The name of the diving supervisor for each commercial diving operation shall be—

(a) Designated in writing; and

(b) Given to the person-in-charge prior to the commencement of any commercial diving operation.

EQUIPMENT

§ 197.300 Applicability.

(a) Each diving installation used on each vessel or facility subject to this subpart must meet the requirements of this subpart.

(b) In addition to the requirements of this subpart, equipment which is permanently installed on vessels and is part of the diving installation must meet subchapters F and J of this chapter.

(c) All repairs and modifications to pressure vessels used for commercial diving operations must be made in accordance with the requirements of section VIII, division 1 or division 2 of the ASME Code, ASME PVHO-1, part 54 of this chapter, or 49 CFR 173.34, as applicable.

(d) All repairs and modifications to pressure piping used for commercial diving operations must be made in accordance with the requirements of the ANSI Code or part 56 of this chapter, as applicable.

§ 197.310 Air compressor system.

A compressor used to supply breathing air to a diver must have—

(a) A volume tank that is—

(1) Built and stamped in accordance with section VIII, division 1 of the ASME Code with—

(i) A check valve on the inlet side;

(ii) A pressure gage;

(iii) A relief valve; and

(iv) A drain valve; and

(2) Tested after every repair, modification, or alteration to the pressure boundaries as required by § 197.462;

(b) Intakes that are located away from areas containing exhaust fumes of internal combustion engines or other hazardous contaminants;

(c) An efficient filtration system; and

(d) Slow-opening shut-off valves when the maximum allowable working pressure of the system exceeds 500 psig.

§ 197.312 Breathing supply hoses.

(a) Each breathing supply hose must—

(1) Have a maximum working pressure that is equal to or exceeds—

(i) The maximum working pressure of the section of the breathing supply system in which used; and

(ii) The pressure equivalent of the maximum depth of the dive relative to the supply source plus 100 psig;

(2) Have a bursting pressure of four times its maximum working pressure;

(3) Have connectors that—

(i) Are made of corrosion-resistant material;

(ii) Are resistant to accidental disengagement; and

(iii) Have a maximum working pressure that is at least equal to the maximum working pressure of the hose to which they are attached; and

(4) Resist kinking by—

(i) Being made of kink-resistant materials; or

(ii) Having exterior support.

(b) Each umbilical must—

(1) Meet the requirements of paragraph (a) of this section; and

(2) Be marked from the diver or open bell end in 10-foot intervals to 100 feet and in 50-foot intervals thereafter.

§ 197.314 First aid and treatment equipment.

(a) Each dive location must have—

(1) A medical kit approved by a physician that consists of—

(i) Basic first aid supplies; and

(ii) Any additional supplies necessary to treat minor trauma and illnesses resulting from hyperbaric exposure;

(2) A copy of an American Red Cross Standard First Aid handbook;

(3) A bag-type manual resuscitator with transparent mask and tubing; and

(4) A capability to remove an injured diver from the water.

(b) Each diving installation must have a two-way communications system to obtain emergency assistance except when the vessel or facility ship-to-shore, two-way communications system is readily available.

(c) Each dive location supporting mixed-gas dives, dives deeper than 130 fsw, or dives outside the no-decompression limits must meet the requirements of paragraph (a) of this section and have—

(1) A decompression chamber;

(2) Decompression and treatment tables;

(3) A supply of breathing gases sufficient to treat for decompression sickness;

(4) The medical kit required by paragraph (a)(1) of this section that is—

(i) Capable of being carried into the decompression chamber; and

(ii) Suitable for use under hyperbaric conditions; and

(5) A capability to assist an injured diver into the decompression chamber.

§ 197.318 Gages and timekeeping devices.

(a) A gage indicating diver depth must be at each dive location for surface-supplied dives.

(b) A timekeeping device must be at each dive location.

§ 197.320 Diving ladder and stage.

(a) Each diving ladder must—

(1) Be capable of supporting the weight of at least two divers;

(2) Extend 3 feet below the water surface;

(3) Be firmly in place;

(4) Be available at the dive location for a diver to enter or exit the water unless a diving stage or bell is provided; and

(5) Be—(i) Made of corrosion-resistant material; or

(ii) Protected against and maintained free from injurious corrosion.

(b) Each diving stage must—

(1) Be capable of supporting the weight of at least two divers;

(2) Have an open-grating platform;

(3) Be available for a diver to enter or exit the water from the dive location and for in-water decompression if the diver is—

(i) Wearing a heavy-weight diving outfit; or

(ii) Diving outside the no-decompression limits, except when a bell is provided; and

(4) Be—(i) Made of corrosion-resistant material; or

(ii) Protected against and maintained free from injurious corrosion.

§ 197.322 Surface-supplied helmets and masks.

(a) Each surface-supplied helmet or mask must have—

(1) A nonreturn valve at the attachment point between helmet or mask and umbilical that closes readily and positively;

(2) An exhaust valve; and

(3) A two-way voice communication system between the diver and the dive location or bell.

(b) Each surface-supplied air helmet or mask must—

(1) Ventilate at least 4.5 ACFM at any depth at which it is operated; or

(2) Be able to maintain the diver's inspired carbon dioxide partial pressure below 0.02 ATA when the diver is producing carbon dioxide at the rate of 1.6 standard liters per minute.

§ 197.324 Diver's safety harness.

Each safety harness used in surface-supplied diving must have—

(a) A positive buckling device; and

(b) An attachment point for the umbilical life line that—

(1) Distributes the pulling force of the umbilical over the diver's body; and

(2) Prevents strain on the mask or helmet.

§ 197.326 Oxygen safety.

(a) Equipment used with oxygen or oxygen mixtures greater than 40 percent by volume must be designed for such use.

(b) Oxygen systems with pressures greater than 125 psig must have slow-opening shut-off valves except pressure boundary shut-off valves may be ball valves.

§ 197.328 PVHO—General.

(a) Each PVHO, contracted for or purchased after February 1, 1979, must be built and stamped in accordance with ASME PVHO-1.

(b) Each PVHO, contracted for or constructed before February 1, 1979, and not Coast Guard approved, must be submitted to the Coast Guard for approval prior to February 1, 1984.

(c) To be approved under paragraph (b), a PVHO must be—

(1) Constructed in accordance with Part 54 of this Chapter; or—

(2) Be built in accordance with section VIII, division 1 or division 2 of the ASME Code; and—

(i) Have the plans approved in accordance with § 54.01-18 of this chapter;

(ii) Pass the radiographic and other survey tests of welded joints required by section VIII, division 1 or division 2, as appropriate, of the ASME Code; and

(iii) Pass—(A) The hydrostatic test described in § 54.10-10 of this chapter; or

(B) The pneumatic test described in § 54.10-15 of this chapter and such additional tests as the Officer-in-Charge, Marine Inspection (OCMI) may require.

(d) Each PVHO must—

(1) Have a shut-off valve located within 1 foot of the pressure boundary on all piping penetrating the pressure boundary;

(2) Have a check valve located within 1 foot of the pressure boundary on all piping exclusively carrying fluids into the PVHO;

(3) Have the pressure relief device required by ASME PVHO-1;

(4) Have a built-in breathing system with at least one mask per occupant stored inside each separately pressurized compartment;

(5) Have a two-way voice communications system allowing communications between an occupant in one pressurized compartment of the PVHO and—

(i) The diving supervisor at the dive location;

(ii) Any divers being supported from the same PVHO; and

(iii) Occupants of other separately pressurized compartments of the same PVHO;

(6) If designed to mechanically couple to another PVHO, have a two-way communications system allowing communications between occupants of each PVHO when mechanically coupled;

(7) Have a pressure gage in the interior of each compartment that is—

(i) Designed for human occupancy; and

(ii) Capable of having the compartment pressure controlled from inside the PVHO;

(8) Have viewports that allow observation of occupants from the outside;

(9) Have viewports that meet the requirements of ASME PVHO-1 except those PVHO's approved under paragraph (b) of this section which have nonacrylic viewports;

(10) Have means of illumination sufficient to allow an occupant to—

(i) Read gages; and

(ii) Operate the installed systems within each compartment;

(11) Be designed and equipped to minimize sources of combustible materials and ignition;

(12) Have a protective device on the inlet side of PVHO exhaust lines;

(13) Have a means of extinguishing a fire in the interior;

(14) Have a means of maintaining the oxygen content of the interior atmosphere below 25 percent surface equivalent by volume when pressurized with air as the breathing mixture;

(15) Have a means of maintaining the interior atmosphere below 2 percent surface equivalent carbon dioxide by volume;

(16) Have a means of overriding and controlling from the exterior all interior breathing and pressure supply controls;

(17) Have a speech unscrambler when used with mixed-gas;

(18) Have interior electrical systems that are designed for the environment in which they will operate to minimize the risk of fire, electrical shock to personnel, and galvanic action of the PVHO; and

(19) Be tested after every repair, modification, or alteration to the pressure boundaries as required by § 197.462.

§ 197.330 PVHO—Closed bells.

(a) Except as provided in paragraph (b) of this section, each closed bell must meet the requirements of § 197.328 and—

(1) Have underwater breathing apparatus for each occupant stored inside each separately pressurized compartment;

(2) Have an umbilical;

(3) Have lifting equipment attached to the closed bell capable of returning the occupied closed bell when fully flooded to the dive location;

(4) Be capable of recompressing on the surface to the maximum design diving depth;

(5) Be constructed and equipped as required by § 197.332;

(6) Have an emergency locating device designed to assist personnel on the surface in acquiring and maintaining contact with the submerged PVHO if the umbilical to the surface is severed;

(7) Have a capability to remove an injured diver from the water; and

(8) Have a life support capability for the intact closed bell and its occupants for—

(i) Twelve hours after an accident severing the umbilical to the surface when the umbilical to the surface is the only installed means of retrieving the closed bell; or

(ii) A period of time, at least equal to 1 hour plus twice the time required to retrieve the bell from its designed operating depth and attach an auxiliary lifesupport system, after an accident severing the umbilical to the surface when the umbilical is one of the two independent installed means of retrieving the closed bell, each meeting the requirements of paragraph (a)(3) of this section.

(b) A closed bell that does not meet the requirements of paragraphs (a)(3), (a)(4), and (a)(5) of this section, must be capable of attachment to another PVHO that—

(1) Allows the transfer of personnel and diver's equipment under pressure from the closed bell to the PVHO;

(2) Meets the requirements of paragraph (a)(3) of this section;

(3) Is capable of attachment to a decompression chamber meeting the requirements of paragraphs (a)(4) and (a)(5) of this section; and

(4) Allows the transfer of personnel and diver's equipment under pressure from the PVHO to the decompression chamber.

§ 197.332 PVHO—Decompression chambers.

Each decompression chamber must—

(a) Meet the requirements of § 197.328;

(b) Have internal dimensions sufficient to accommodate a diver lying in a horizontal position and another person tending the diver;

(c) Have a capability for ingress and egress of personnel and equipment while the occupants are under pressure;

(d) Have a means of operating all installed man-way locking devices, except disabled shipping dogs, from both sides of a closed hatch;

(e) Have interior illumination sufficient to allow visual observation, diagnosis, and medical treatment of an occupant.

(f) Have one bunk for each two occupants;

(g) Have a capability that allows bunks to be seen over their entire lengths from the exterior;

(h) Have a minimum pressure capability of—

(1) 6 ATA, when used for diving to 300 fsw; or

(2) The maximum depth of the dive, when used for diving operations deeper than 300 fsw, unless a closed bell meeting the requirements of § 197.330(a) (3), (4), and (5) is used;

(i) Have a minimum pressurization rate of 2 ATA per minute to 60 fsw and at least 1 ATA per minute thereafter;

(j) Have a decompression rate of 1 ATA per minute to 33 fsw;

(k) Have an external pressure gage for each pressurized compartment;

(l) Have a capability to supply breathing mixtures at the maximum rate required by each occupant doing heavy work; and

(m) Have a sound-powered headset or telephone as a backup to the communications system required by § 197.328(c) (5) and (6), except when that communications system is a sound-powered system.

§ 197.334 Open diving bells.

Each open diving bell must—

(a) Have an upper section that provides an envelope capable of maintaining a bubble of breathing mixture available to a diver standing on the lower section of the platform with his body through the open bottom and his head in the bubble;

(b) Have lifting equipment capable of returning the occupied open bell to the dive location;

(c) Have an umbilical; and

(d) Be—(1) Made of corrosion-resisting material; or

(2) Protected against and maintained free from injurious corrosion.

§ 197.336 Pressure piping.

Piping systems that are not an integral part of the vessel or facility, carrying fluids under pressures exceeding 15 psig must—

(a) Meet the ANSI Code;

(b) Have the point of connection to the integral piping system of the vessel or facility clearly marked; and

(c) Be tested after every repair, modification, or alteration to the pressure boundaries as set forth in § 197.462.

§ 197.338 Compressed gas cylinders.

Each compressed gas cylinder must—

(a) Be stored in a ventilated area;

(b) Be protected from excessive heat;

(c) Be prevented from falling;

(d) Be tested after any repair, modification, or alteration to the pressure boundries as set forth in § 197.462; and

(e) Meet the requirements of—

(1) Part 54 of this Chapter; or

(2) 49 CFR 173.34 and 49 CFR 178 Subpart C.

§ 197.340 Breathing gas supply.

(a) A primary breathing gas supply for surface-supplied diving must be sufficient to support the following for the duration of the planned dive:

(1) The diver.

(2) The standby diver.

(3) The decompression chamber, when required by § 197.432(e)(2) or by § 197.434(a) for the duration of the dive and for one hour after completion of the planned dive.

(4) A decompression chamber when provided but not required by this subpart.

(5) A closed bell when provided or required by § 197.434(d).

(6) An open bell when provided or required by § 197.432(e)(4) or by § 197.434(c).

(b) A secondary breathing gas supply for surface-supplied diving must be sufficient to support the following:

(1) The diver while returning to the surface.

(2) The diver during decompression.

(3) The standby diver.

(4) The decompression chamber when required by § 197.432(e)(2) or by § 197.434(a) for the duration of the dive and one hour after the completion of the planned dive.

(5) The closed bell while returning the diver to the surface.

(6) The open bell while returning the diver to the surface.

(c) A diver-carried reserve breathing gas supply for surface-supplied diving must be sufficient to allow the diver to—

(1) Reach the surface.

(2) Reach another source of breathing gas; or

(3) Be reached by a standby diver equipped with another source of breathing gas for the diver.

(d) A primary breathing gas supply for SCUBA diving must be sufficient to support the diver for the duration of the planned dive through his return to the dive location or planned pick-up point.

(e) A diver-carried reserve breathing gas supply for SCUBA diving must be sufficient to allow the diver to return to the dive location or planned pick-up point from the greatest depth of the planned dive.

(f) Oxygen used for breathing mixtures must—

(1) Meet the requirements of Federal Specification BB-0-925a; and

(2) Be type 1 (gaseous) grade A or B.

(g) Nitrogen used for breathing mixtures must—

(1) Meet the requirements of Federal Specification BB-N-411c;

(2) Be type 1 (gaseous);

(3) Be class 1 (oil free); and

(4) Be grade A, B, or C.

(h) Helium used for breathing mixtures must be grades A, B, or C produced by the Federal Government, or equivalent.

(i) Compressed air used for breathing mixtures must—

(1) Be 20 to 22 percent oxygen by volume;

(2) Have no objectionable odor; and

(3) Have no more than—

(i) 1,000 parts per million of carbon dioxide;

(ii) 20 parts per million carbon monoxide;

(iii) 5 milligrams per cubic meter of solid and liquid particulates including oil; and

(iv) 25 parts per million of hydrocarbons (includes methane and all other hydrocarbons expressed as methane).

§ 197.342 Buoyancy-changing devices.

(a) A dry suit or other buoyancy-changing device not directly connected to the exhaust valve of the helmet or mask must have an independent exhaust valve.

(b) When used for SCUBA diving, a buoyancy-changing device must have an inflation source separate from the breathing gas supply.

§ 197.344 Inflatable floatation devices.

An inflatable floatation device for SCUBA diving must—

(a) Be capable of maintaining the diver at the surface in a faceup position;

(b) Have a manually activated inflation device;

(c) Have an oral inflation device;

(d) Have an over-pressure relief device; and

(e) Have a manually operated exhaust valve.

§ 197.346 Diver's equipment.

(a) Each diver using SCUBA must have—

(1) Self-contained underwater breathing equipment including—

(i) A primary breathing gas supply with a cylinder pressure gage readable by the diver during the dive; and

(ii) A diver-carried reserve breathing gas supply provided by—

(A) A manual reserve (J valve); or

(B) An independent reserve cylinder connected and ready for use;

(2) A face mask;

(3) An inflatable floatation device;

(4) A weight belt capable of quick release;

(5) A knife;

(6) Swim fins or shoes;

(7) A diving wristwatch; and

(8) A depth gage.

(b) Each diver using a heavyweight diving outfit must—

(1) Have a helmet group consisting of helmet, breastplate, and associated valves and connections;

(2) Have a diving dress group consisting of a basic dress that encloses the body (except for head and hands) in a tough, waterproof cover, gloves, shoes, weight assembly, and knife;

(3) Have a hose group consisting of the breathing gas hose and fittings, the control valve, the lifeline, communications cable, and a pneumofathometer; and

(4) Be provided with a helmet cushion and weighted shoes.

(c) Each surface-supplied dive operation using a heavyweight diving outfit must have an extra breathing gas hose with attaching tools available to the standby diver.

(d) Each diver using a lightweight diving outfit must have—

(1) A safety harness;

(2) A weight assembly capable of quick release;

(3) A mask group consisting of a lightweight mask and associated valves and connections;

(4) A diving dress group consisting of wet or dry diving dress, gloves, shoes or fins, and knife; and

(5) A hose group consisting of the breathing gas hose and fittings, the control valve, the lifeline, communications cable, and a pneumofathometer (if the breaking strength of the communications cable is at least equal to that required for the lifeline, the communications cable can serve as the lifeline).

(e) Each surface-supplied air dive operation within the no-decompression limits and to depths of 130 fsw or less must have a primary breathing gas supply at the dive location.

(f) Each surface-supplied dive operation outside the no-compression limits, deeper than 130 fsw, or using mixed-gas as a breathing mixture must have at the dive location—

(1) A primary breathing gas supply; and

(2) A secondary breathing gas supply.

(g) Each diver diving outside the no-decompression limits, deeper than 130 fsw, or using mixed-gas must have a diver-carried reserve breathing gas supply except when using a heavyweight diving outfit or when diving in a physically confining area.

OPERATIONS

§ 197.400 Applicability.

Diving operations may only be conducted from a vessel or facility subject to the subpart if the regulations in this subpart are met.

§ 197.402 Responsibilities of the person-in-charge.

(a) The person-in-charge shall—

(1) Be fully cognizant of the provisions of this subpart;

(2) Prior to permitting any commercial diving operation to commence, have—

(i) The designation of the diving supervisor for each diving operation as required by § 197.210;

(ii) A report on—

(A) The nature and planned times of the planned diving operation; and

(B) The planned involvement of the vessel or facility, its equipment, and its personnel in the diving operation.

(b) Prior to permitting any commerical diving operation involving liveboating to commence, the person-in-charge shall insure that—

(1) A means of rapid communications with the diving supervisor while the diver is entering, in, or leaving the water is established; and

(2) A boat and crew for diver pickup in the event of an emergency is provided.

(c) The person-in-charge shall insure that a boat and crew for SCUBA diver pickup is provided when SCUBA divers are not line-tended from the dive location.

(d) The person-in-charge shall coordinate the activities on and of the vessel or facility with the diving supervisor.

(e) The person-in-charge shall insure that the vessel or facility equipment and personnel are kept clear of the dive location except after coordinating with the diving supervisor.

§ 197.404 Responsibilities of the diving supervisor.

(a) The diving supervisor shall—

(1) Be fully cognizant of the provisions of this subpart;

(2) Be fully cognizant of the provisions of the operations manual required by § 197.420;

(3) Insure that diving operations conducted from a vessel or facility subject to this subpart meet the regulations in this subpart;

(4) Prior to the commencement of any commercial diving operation, provide the report required by § 197.402 to the person-in-charge;

(5) Coordinate with the person-in-charge any changes that are made to the report required by § 197.402; and

(6) Promptly notify the person-in-charge of any diving related casualty, accident, or injury.

(b) The diving supervisor is in charge of the planning and execution of the diving operation including the responsibility for the safety and health of the dive team.

§ 197.410 Dive procedures.

(a) The diving supervisor shall insure that—

(1) Before commencing diving operations, dive team members are briefed on—

(i) The tasks to be undertaken;

(ii) Any unusual hazards or environmental conditions likely to affect the safety of the diving operation; and

(iii) Any modifications to the operations manual or procedures including safety procedures necessitated by the specific diving operation;

(2) The breathing gas supply systems, masks, helmets, thermal protection, when provided, and bell lifting equipment, when a bell is provided or required, are inspected prior to each diving operation;

(3) Each diver is instructed to report any physical problems or physiological effects including aches, pains, current illnesses, or symptoms of decompression sickness prior to each dive;

(4) A depth, bottom time profile, including any breathing mixture changes, is maintained at the dive location for each diver during the dive, except that SCUBA divers shall maintain their own profiles;

(5) A two-way voice communication system is used between—

(i) Each surface-supplied diver and a dive team member at the dive location or bell (when provided); and

(ii) The bell (when provided) and the dive location;

(6) A two-way communication system is available at the dive location to obtain emergency assistance;

(7) After the completion of each dive—

(i) The physical condition of the diver is checked by—

(A) Visual observation; and

(B) Questioning the diver about his physical well-being;

(ii) The diver is instructed to report any physical problems or adverse physiological effects including aches, pains, current illnesses, or symptoms of decompression sickness or gas embolism;

(iii) The diver is advised of the location of an operational decompression chamber; and

(iv) The diver is alerted to the potential hazards of flying after diving;

(8) For any dive outside the no-decompression limits, deeper than 130 fsw, or using mixed-gas as a breathing mixture—

(i) A depth, time, decompression profile including breathing mixture changes is maintained for each diver at the dive location;

(ii) The diver is instructed to remain awake and in the vicinity of the dive location decompression chamber for at least one hour after the completion of a dive, decompression, or treatment; and

(iii) A dive team member, other than the diver, is trained and available to operate the decompression chamber; and

(9) When decompression sickness or gas embolism is suspected or symptoms are evident, a report is completed containing—

(i) The investigation for each incident including—

(A) The dive and decompression profiles;

(B) The composition, depth, and time of breathing mixture changes;

(C) A description of the symptoms including depth and time of onset; and

(D) A description and results of the treatment;

(ii) The evaluation for each incident based on—

(A) The investigation;

(B) Consideration of the past performance of the decompression table used; and

(C) Individual susceptibility; and

(iii) The corrective action taken, if necessary, to reduce the probability of recurrence.

(b) The diving supervisor shall ensure that the working interval of a dive is terminated when he so directs or when—

(1) A diver requests termination;

(2) A diver fails to respond correctly to communications or signals from a dive team member;

(3) Communications are lost and can not be quickly reestablished between—

(i) The diver and a dive team member at the dive location; or

(ii) The person-in-charge and the diving supervisor during liveboating operations; or

(4) A diver begins to use his diver-carried reserve breathing gas supply.

§ 197.420 Operations manual.

(a) The diving supervisor shall—

(1) Provide an operations manual to the person-in-charge prior to commencement of any diving operation; and

(2) Make an operations manual available at the dive location to all members of the dive team.

(b) The operations manual must be modified in writing when adaptation is required because of—

(1) The configuration or operation of the vessel or facility; or

(2) The specific diving operation as planned.

(c) The operations manual must provide for the safety and health of the divers.

(d) The operations manual must contain the following:

(1) Safety procedures and checklists for each diving mode used.

(2) Assignments and responsibilities of each dive team member for each diving mode used.

(3) Equipment procedures and checklists for each diving mode used.

(4) Emergency procedures for—

(i) Fire;

(ii) Equipment failure;

(iii) Adverse environmental conditions including, but not limited to, weather and sea state;

(iv) Medical illness; and

(v) Treatment of injury.

(5) Procedures dealing with the use of—

(i) Hand-held power tools;

(ii) Welding and burning equipment; and

(iii) Explosives.

SPECIFIC DIVING MODE PROCEDURES

§ 197.430 SCUBA diving.

The diving supervisor shall insure that—

(a) SCUBA diving is not conducted—

(1) Outside the no-decompression limits;

(2) At depths greater than 130 fsw;

(3) Against currents greater than one (1) knot unless line-tended; and

(4) If a diver cannot directly ascend to the surface unless line-tended;

(b) The SCUBA diver has the equipment required by § 197.346(a);

(c) A standby diver is available while a diver is in the water;

(d) A diver is line-tended from the surface or accompanied by another diver in the water in continuous visual contact during the diving operation;

(e) When a diver is in a physically confining space, another diver is stationed at the underwater point of entry and is line-tending the diver; and

(f) A boat is available for diver pickup when the divers are not line-tended from the dive location.

§ 197.432 Surface-supplied air diving.

The diving supervisor shall insure that—

(a) Surface-supplied air diving is conducted at depths less than 190 fsw, except that dives with bottom times of 30 minutes or less may be conducted to depths of 220 fsw;

(b) Each diving operation has a primary breathing gas supply;

(c) Each diver is continuously tended while in the water;

(d) When a diver is in a physically confining space, another diver is stationed at the underwater point of entry and is line-tending the diver;

(e) For dives deeper than 130 fsw or outside the no-decompression limits—

(1) Each diving operation has a secondary breathing gas supply;

(2) A decompression chamber is ready for use at the dive location;

(3) A diving stage is used except when a bell is provided;

(4) A bell is used for dives with an in-water decompression time greater than 120 minutes, except when the diver is using a heavy-weight diving outfit or is diving in a physically confining space;

(5) A separate dive team member tends each diver in the water;

(6) A standby diver is available while a diver is in the water; and

(7) Each diver has a diver-carried reserve breathing gas supply except when using a heavy-weight diving outfit or when diving in a physically confining space; and

(f) The surface-supplied air diver has the equipment required by § 197.346 (b) or (d).

§ 197.434 Surface-supplied mixed-gas diving.

The diving supervisor shall insure that—

(a) When mixed-gas diving is conducted, a decompression chamber or a closed bell meeting the requirements of § 197.332 is ready for use at the dive location;

(b) A diving stage is used except when a bell is provided;

(c) A bell is used for dives deeper than 220 fsw or when the dive involves in-water decompression times greater than 120 minutes, except when the diver is using a heavy-weight diving outfit or is diving in a physically confining space;

(d) A closed bell is used for dives at depths greater than 300 fsw, except when diving is conducted in a physically confining space;

(e) A separate dive team member tends each diver in the water;

(f) A standby diver is available during all nonsaturation dives;

(g) When saturation diving is conducted—

(1) A standby diver is available when the closed bell leaves the dive location until the divers are in saturation; and

(2) A member of the dive team at the dive location is a diver able to assist in the recovery of the closed bell or its occupants, if required;

(h) When closed bell operations are conducted, a diver is available in the closed bell to assist a diver in the water;

(i) When a diver is in a physically confining space, another diver is stationed at the underwater point of entry and is line-tending the diver;

(j) Each diving operation has a primary and secondary breathing gas supply meeting the requirements of § 197.340; and

(k) The surface-supplied mixed-gas diver has the equipment required by § 197.346 (b) or (d).

§ 197.436 Liveboating.

(a) During liveboating operations, the person-in-charge shall insure that—

(1) Diving is not conducted in seas that impede station-keeping ability of the vessel;

(2) Liveboating operations are not conducted—

(i) From 1 hour after sunset to 1 hour before sunrise; or

(ii) During periods of restricted visibility;

(3) The propellers of the vessel are stopped before the diver enters or exits the water; and

(4) A boat is ready to be launched with crew in the event of an emergency.

(b) As used in paragraph (a)(2)(ii) of this section, "restricted visibility" means any condition in which vessel navigational visibility is restricted by fog, mist, falling snow, heavy rainstorms, sandstorms or any other similar causes.

(c) During liveboating operations, the diving supervisor shall insure that—

(1) Diving is not conducted at depths greater than 220 fsw;

(2) Diving is not conducted in seas that impede diver mobility or work function;

(3) A means is used to prevent the diver's hose from entangling in the propellers of the vessel;

(4) Each diver carries a reserve breathing gas supply;

(5) A standby diver is available while a diver is in the water;

(6) Diving is not conducted with in-water decompression times greater than 120 minutes; and

(7) The person-in-charge is notified before a diver enters or exits the water.

PERIODIC TESTS AND INSPECTIONS OF DIVING EQUIPMENT

§ 197.450 Breathing gas tests.

The diving supervisor shall insure that—

(a) The output of each air compressor is tested and meets the requirements of § 197.340 for quality and quantity by means of samples taken at the connection point to the distribution system—

(1) Every 6 months; and

(2) After every repair or modification.

(b) Purchased supplies of breathing mixtures supplied to a diver are checked before being placed on line for—

(1) Certification that the supply meets the requirements of § 197.340; and

(2) Noxious or offensive odor and oxygen percentage;

(c) Each breathing supply system is checked, prior to commencement of diving operations, at the umbilical or underwater breathing apparatus connection point for the diver, for noxious or offensive odor and presence of oil mist; and

(d) Each breathing supply system, supplying mixed-gas to a diver, is checked, prior to commencement of diving operations, at the umbilical or underwater breathing apparatus connection point for the diver, for percentage of oxygen.

§ 197.452 Oxygen cleaning.

The diving supervisor shall ensure that equipment used with oxygen or oxygen mixtures greater than 40 percent by volume is cleaned of flammable materials—

(a) Before being placed into service; and

(b) After any repair, alteration, modification, or suspected contamination.

§ 197.454 First aid and treatment equipment.

The diving supervisor shall ensure that medical kits are checked monthly to insure that all required supplies are present.

§ 197.456 Breathing supply hoses.

(a) The diving supervisor shall insure that—

(1) Each breathing supply hose is pressure tested prior to being placed into initial service and every 24 months thereafter to 1.5 times its maximum working pressure;

(2) Each breathing supply hose assembly, prior to being placed into initial service and after any repair, modification, or alteration, is tensile tested by—

(i) Subjecting each hose-to-fitting connection to a 200 pound axial load; and

(ii) Passing a visual examination for evidence of separation, slippage, or other damage to the assembly;

(3) Each breathing supply hose is periodically checked for—

(i) Damage which is likely to affect pressure integrity; and

(ii) Contamination which is likely to affect the purity of the breathing mixture delivered to the diver; and

(4) The open ends of each breathing supply hose are taped, capped, or plugged when not in use.

(b) To meet the requirements of paragraph (a)(3) of this section, each breathing supply hose must be—

(1) Carefully inspected before being shipped to the dive location;

(2) Visually checked during daily operation; and

(3) Checked for noxious or offensive odor before each diving operation.

§ 197.458 Gages and timekeeping devices.

The diving supervisor shall insure that—

(a) Each depth gage and timekeeping device is tested or calibrated against a master reference gage or time- keeping device every 6 months;

(b) A depth gage is tested when a discrepancy exists in a depth gage reading greater than 2 percent of full scale between any two gages of similar range and calibration;

(c) A timekeeping device is tested when a discrepancy exists in a timekeeping device reading greater than one-quarter of a minute in a 4-hour period between any two timekeeping devices; and

(d) Each depth gage and timekeeping device is inspected before diving operations are begun.

§ 197.460 Diving equipment.

The diving supervisor shall insure that the diving equipment designated for use in a dive under § 197.346 is inspected before each dive.

§ 197.462 Pressure vessels and pressure piping.

(a) The diving supervisor shall insure that each volume tank, cylinder, PVHO, and pressure piping system has been examined and tested every 12 months and after any repair, modification, or alteration to the extent necessary to determine that they are in condition and fit for the service intended.

(b) The following tests must be made to meet the annual requirements of paragraph (a) of this section:

(1) An internal and external visual examination for mechanical damage or deterioration. If a defect is found that may impair the safety of the pressure vessel, a hydrostatic test must be performed.

(2) A leak test.

(3) A pneumatic test.

(4) A hydrostatic test every fifth year instead of the pneumatic test.

(c) The following tests must be made after any repair, modification, or alteration to meet the requirements of paragraph (a) of this section:

(1) An internal and external visual examination for correctness and adequacy of repair, modification, or alteration.

(2) A leak test.

(3) A hydrostatic test when the repair, modification, or alteration affects the pressure boundary.

(d) When the pneumatic test on pressure vessels is conducted—

(1) The test pressure must be the maximum allowable working pressure stamped on the pressure vessel; and

(2) The test may be conducted only after suitable precautions are taken to protect personnel and equipment.

(e) When the pneumatic test on pressure piping is conducted

(1) The test pressure must be no less than 90 percent of the setting of the relief device; and

(2) The test may be conducted only after suitable precautions are taken to protect personnel and equipment.

(f) When a hydrostatic test on a pressure vessel is made, the test pressure must be—

(1) 1¼ times the pressure stamped on the pressure vessel built to division 2 of the ASME Code; and

(2) 1½ times the pressure stamped on the pressure vessel built to division 1 of the ASME Code.

(g) When a hydrostatic test on pressure piping is conducted, the test must be conducted in accordance with the ANSI Code.

(h) When the leak test on pressure vessels or pressure piping is conducted—

(1) The test must be conducted with the breathing mixture normally used in service;

(2) The test must be conducted at the maximum allowable working pressure; and

(3) The test pressure must be maintained for a minimum of 10 minutes to allow checking all joints, connections, and regions of high stress for leakage.

RECORDS

§ 197.480 **Logbooks.**

(a) The person-in-charge of a vessel or facility required by 46 U.S.C. 201 to have an official logbook shall maintain the logbook on form CG-706.

(b) The person-in-charge of a vessel or facility not required by 46 U.S.C. 201 to have an official logbook, shall maintain, on board, a logbook for making the entries required by this subpart.

(c) The diving supervisor conducting commercial diving operations from a vessel or facility subject to this subpart shall maintain a logbook for making the entries required by this subpart.

§ 197.482 **Logbook entries.**

(a) The person-in-charge shall insure that the following information is recorded in the logbook for each commercial diving operation:

(1) Date, time, and location at the start and completion of dive operations.

(2) Approximate underwater and surface conditions (weather, visibility, temperatures, and currents).

(3) Name of the diving supervisor.

(4) General nature of work performed.

(b) The diving supervisor shall insure that the following information is recorded in the logbook for each commercial diving operation:

(1) Date, time, and location at the start and completion of each dive operation.

(2) Approximate underwater and surface conditions (weather, visibility, temperatures, and currents).

(3) Names of dive team members including diving supervisor.

(4) General nature of work performed.

(5) Repetitive dive designation or elapsed time since last hyperbaric exposure if less than 24 hours for each diver.

(6) Diving modes used.

(7) Maximum depth and bottom time for each diver.

(8) Name of person-in-charge.

(9) For each dive outside the no-decompression limits, deeper than 130 fsw, or using mixed-gas, the breathing gases and decompression table designations used.

(10) When decompression sickness or gas embolism is suspected or symptoms are evident—

(i) The name of the diver; and

(ii) A description and results of treatment.

(11) For each fatality or any diving related injury or illness that results in incapacitation of more than 72 hours or requires any dive team member to be hospitalized for more than 24 hours—

(i) The date;

(ii) Time;

(iii) Circumstances; and

(iv) Extent of any injury or illness.

(c) The diving supervisor shall insure that the following is recorded in the logbook for each diving operation deviating from the requirements of this subpart:

(1) A description of the circumstances leading to the situation.

(2) The deviations made.

(3) The corrective action taken, if appropriate, to reduce the possibility of recurrence.

(d) The diving supervisor shall insure that a record of the following is maintained:

(1) The date and results of each check of the medical kits.

(2) The date and results of each test of the air compressor.

(3) The date and results of each check of breathing mixtures.

(4) The date and results of each check of each breathing supply system.

(5) The date, equipment cleaned, general cleaning procedure, and names of persons cleaning the diving equipment for oxygen service.

(6) The date and results of each test of the breathing supply hoses and system.

(7) The date and results of each inspection of the breathing gas supply system.

(8) The date and results of each test of depth gages and timekeeping devices.

(9) The date and results of each test and inspection of each PVHO.

(10) The date and results of each inspection of the diving equipment.

(11) The date and results of each test and inspection of pressure piping.

(12) The date and results of each test and inspection of volume tanks and cylinders.

(e) The diving supervisor shall insure that a notation concerning the location of the information required under paragraph (d) is made in the logbook.

NOTE.—R.S. 4290 (46 U.S.C. 201) requires that certain entries be made in an official logbook in addition to the entries required by this section; and R.S. 4291 (46 U.S.C. 202) prescribes the manner of making those entries.

§ 197.484 **Notice of casualty.**

(a) In addition to the requirements of subpart 4.05 of this chapter and 33 CFR 146.01-20, the person-in-charge shall notify the Officer-in-Charge, Marine Inspection, as soon as possible after a diving casualty occurs, if the casualty involves any of the following:

(1) Loss of life.

(2) Diving-related injury to any person causing incapacitation for more than 72 hours.

(3) Diving-related injury to any person requiring hospitalization for more than 24 hours.

(b) The notice required by this section must contain the following:

(1) Name and official number (if applicable) of the vessel or facility.

(2) Name of the owner or agent of the vessel or facility.

(3) Name of the person-in-charge.

(4) Name of the diving supervisor.

(5) Description of the casualty including presumed cause.

(6) Nature and extent of the injury to persons.

(c) The notice required by this section is not required if the written report required by § 197.486 is submitted within 5 days of the casualty.

§ 197.486 Written report of casualty.

The person-in-charge of a vessel or facility for which a notice of casualty was made under § 197.484 shall submit a report to the Officer-in-Charge, Marine Inspection, as soon as possible after the casualty occurs, as follows:

(a) On form CG-924E, when the diving installation is on a vessel.

(b) Using a written report, in narrative form, when the diving installation is on a facility. The written report must contain the information required by § 197.484.

(c) The report required by this section must be accompanied by a copy of the report required by § 197.410(a)(9) when decompression sickness is involved.

§ 197.488 Retention of records after casualty.

(a) The owner, agent, or person-in-charge of a vessel or facility for which a report of casualty is made under § 197.484 shall retain all records onboard that are maintained on the vessel or facility and those records required by this subpart for 6 months after the report of a casualty is made or until advised by the Officer-in-Charge, Marine Inspection, that records need not be retained onboard.

(b) The records required by paragraph (a) of this section to be retained on board include, but are not limited to, the following:

(1) All logbooks required by § 197.480.

(2) All reports required by § 197.402(a)(2)(ii), § 197.404(a)(4), § 197.410(a)(9).

(c) The owner, agent, person-in-charge, or diving supervisor shall, upon request, make the records described in this section available for examination by any Coast Guard official authorized to investigate the casualty.

APPENDIX A

The following table gives the depth versus bottom time limits for single, no-decompression, air dives made within any 12-hour period. The limit is the maximum bottom time in minutes that a diver can spend at that depth without requiring decompression beyond that provided by a normal ascent rate of 60 fsw per minute. (Although bottom time is concluded when ascent begins, a slower ascent rate would increase the bottom time thereby requiring decompression.) An amount of nitrogen remains in the tissues of a diver after any air dive, regardless of whether the dive was a decompression or no-decompression dive. Whenever another dive is made within a 12-hour period, the nitrogen remaining in the blood and body tissues of the diver must be considered when calculating his decompression.

AIR NO-DECOMPRESSION LIMITS

Depth (feet):	*No-decompression limits (minutes)*
35	310
40	200
50	100
60	60
70	50
80	40
90	30
100	25
110	20
120	15
130	10

(Source: U.S. Navy Diving Manual, 1 September 1973.)

(46 U.S.C. 239; 46 U.S.C. 390b; 46 U.S.C. 391a; 33 U.S.C. 1509(b); 43 U.S.C. 1333(d)(1); 43 U.S.C. 1331 et seq., as amended by Sec. 203 and 208 of Pub. L. 95-372; 46 U.S.C. 395; 46 U.S.C. 375; 46 U.S.C. 391; 46 U.S.C. 392; 46 U.S.C. 416; 49 U.S.C. 1655(b); 49 CFR 1.46 (b) and (s).)

Dated: November 9, 1978.

R. H. SCARBOROUGH,
Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 78-32282 Filed 11-15-78; 8:45 am]

federal register

THURSDAY, NOVEMBER 16, 1978

PART VII

OFFICE OF MANAGEMENT AND BUDGET

RESCISSIONS AND DEFERRALS

Cumulative Report

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

CUMULATIVE REPORT ON RESCISSIONS AND DEFERRALS

NOVEMBER 1978.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year with respect to which, as of the first day of the month, a special message has been transmitted to the Congress.

This month's report gives the status as of November 1, 1978, of 30 deferrals contained in the first special message for fiscal year 1979. This message was transmitted to the Congress on October 2, 1978.

RESCISSIONS

As of November 1, 1978, no rescission proposals were before the Congress.

DEFERRALS

As of November 1, 1978, $1,169.8 million in 1979 budget authority was being deferred from obligation and another $1.8 million in 1979 obligations was being deferred from expenditure. The following table summarizes the status of deferrals reported by the President, and the attachment shows the history and status of each deferral reported during fiscal year 1979.

INFORMATION FROM SPECIAL MESSAGES

The special message containing information on each of the deferrals covered by the cumulative report is contained in the FEDERAL REGISTERof: Wednesday, October 11, 1978 (Vol. 43, No. 197, Part III).

JAMES T. MCINTYRE, Jr.,
Director.

[3110-01-C]

PAGE 1 ATTACHMENT - STATUS OF DEFERRALS - FISCAL YEAR 1979 AS OF 11/06/78 18:17

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB/AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 11-01-78
DEPARTMENT OF AGRICULTURE									
Foreign Agricultural Service									
Salaries & expenses (special foreign currency)	BA	D79- 1	415		10 2 78				415
Agricultural Stabilization & Conservation Service									
Commodity credit corporation	BA	D79- 2	3,530		10 2 78				3,530
Forest Service									
Expenses, brush disposal	BA	D79- 3	32,225		10 2 78				32,225
Restoration of forest lands	BA	D79- 4	48		10 2 78				48
DEPARTMENT OF AGRICULTURE TOTAL	BA		36,218						36,218
DEPARTMENT OF COMMERCE									
National Oceanic and Atmospheric Administration									
Construction	BA	D79- 5	9,830		10 2 78				9,830
Promote and develop fishery products and research	BA	D79- 6	12,060		10 2 78	-5,000			7,060
Fisheries loan fund	BA	D79- 7	5,429		10 2 78				5,429
DEPARTMENT OF COMMERCE TOTAL	BA		27,319			-5,000			22,319

PAGE 2 ATTACHMENT - STATUS OF DEFERRALS - FISCAL YEAR 1979 AS OF 11/06/78 18:17

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 11-01-78
DEPARTMENT OF DEFENSE-MILITARY									
Military Construction									
Military construction, all services	BA	D79- 8	548,451		10 2 78				548,451
DEPARTMENT OF DEFENSE-MILITARY TOTAL BA			548,451						548,451
DEPARTMENT OF DEFENSE-CIVIL									
Corps of Engineers									
Alaska hydroelectric power development fund	BA	D79-10	5,450		10 2 78				5,450
Miscellaneous Accounts									
Wildlife conservation, etc., military reservations	BA	D79- 9	458		10 2 78				458
DEPARTMENT OF DEFENSE-CIVIL TOTAL BA			5,908						5,908
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE									
Alcohol, Drug Abuse & Mental Health Administration									
Construction & renovation, St. Elizabeths Hospital	BA	D79-11	27,577		10 2 78				27,577
Social Security Administration									
Limitation on salaries and expenses	BA	D79-12	1,725		10 2 78				1,725
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE TOTAL BA			29,302						29,302

PAGE 3 ATTACHMENT - STATUS OF DEFERRALS - FISCAL YEAR 1979 AS OF 11/06/78 18:17

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 11-01-78
DEPARTMENT OF THE INTERIOR									
Heritage Conservation and Recreation Service									
Land and water conservation fund	BA	D79-13	30,000		10 2 78				30,000
Geological Survey									
Payments from proceeds, sale of water	BA	D79-14	36		10 2 78				36
Bureau of Mines									
Drainage of anthracite mines	BA	D79-15	1,700		10 2 78				1,700
Office of Territorial Affairs									
Trust territory of the Pacific Islands	BA	D79-16	12,000		10 2 78				12,000
DEPARTMENT OF THE INTERIOR TOTAL	BA		43,736						43,736
DEPARTMENT OF JUSTICE									
Federal Prison System									
Buildings and facilities	BA	D79-17	25,300		10 2 78				25,300
DEPARTMENT OF JUSTICE TOTAL	BA		25,300						25,300
DEPARTMENT OF STATE									
Other									

PAGE 4 ATTACHMENT - STATUS OF DEFERRALS - FISCAL YEAR 1979 AS OF 11/06/78 18:17

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 11-01-78
Emergency refugee and migration assistance fund									
	BA	D79-18	2,750		10 2 78				2,750
DEPARTMENT OF STATE									
TOTAL BA			2,750						2,750
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Civil supersonic aircraft development termination									
	BA	D79-19	3		10 2 78				3
Facilities & equip. (Airport & airway trust fund)									
	BA	D79-20	290,176		10 2 78				290,176
Federal Highway Administration									
Trust fund share of other highway programs									
	BA	D79-21	40,000		10 2 78				40,000
Overseas highway									
	BA	D79-22	13,100		10 2 78				13,100
DEPARTMENT OF TRANSPORTATION									
TOTAL BA			343,279						343,279
DEPARTMENT OF THE TREASURY									
Office of the Secretary									
Antirecession financial assistance fund									
	BA	D79-23	2,205		10 2 78	-4			2,201
State and local government fiscal assistance fund									
	BA	D79-24	78,489		10 2 78				78,489
	O	D79-25	2,404		10 2 78	-556			1,848

PAGE 5 ATTACHMENT - STATUS OF DEFERRALS - FISCAL YEAR 1979 AS OF 11/06/78 18:17

AMOUNTS IN THOUSANDS OF DOLLARS / AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 11-01-78
Bureau of the Mint								
Construction of mint facilities								
BA	D79-26	5,730		10 2 78				5,730
DEPARTMENT OF THE TREASURY								
TOTAL BA		86,424			-4			86,420
TOTAL O		2,404			-556			1,848
GENERAL SERVICES ADMINISTRATION								
Property Management and Disposal Activities								
Rare silver dollar program								
BA	D79-27	2,123		10 2 78				2,123
Federal Preparedness Agency								
State and local preparedness								
BA	D79-28	80		10 2 78				80
GENERAL SERVICES ADMINISTRATION								
TOTAL BA		2,203						2,203
OTHER INDEPENDENT AGENCIES								
Foreign Claims Settlement Commission								
Payment of Vietnam prisoner of war claims								
BA	D79-29	10,945		10 2 78	-1,051			9,894
Interstate Commerce Commission								
Payment of directed rail service								
BA	D79-30	13,990		10 2 78				13,990
OTHER INDEPENDENT AGENCIES								
TOTAL BA		24,935			-1,051			23,884
TOTAL BA		1,175,825			-6,055			1,169,770
TOTAL O		2,404			-556			1,848

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