

45 CFR Part 415

Grants for Construction of University Affiliated Facilities for the Mentally Retarded; Deletion of Part

AGENCY: Office of Human Development Services, DHEW.

ACTION: Notice of Deletion of Part 415 in Title 45 of the Code of Federal Regulations (CFR).

SUMMARY: The Rehabilitation Services Administration (RSA) in the Office of Human Development Services is amending the CFR by deleting Part 415 of Title 45. This amendment is necessary because Part 415 was superseded on January 27, 1977 by Parts 1385 and 1387 of Chapter XIII of Title 45. The effect of this amendment is to delete the obsolete Part 415 regulation and to inform the public that 45 CFR Parts 1385 and 1387 are the current regulations for this program.

EFFECTIVE DATE: January 27, 1977.

FOR FURTHER INFORMATION CONTACT: Kathleen Arneson, Director, Division of Legislation, Regulations, and Congressional Relations, Rehabilitation Services Administration, 330 C Street, S.W., Room 3014, Washington, D.C. 20201, (202) 245-0771.

SUPPLEMENTARY INFORMATION: Part 415 regulated grants for the Construction of University Affiliated Facilities for the Mentally Retarded based on Pub. L. 88-164 (the Mental Retardation Facilities and Community Mental Health Center Construction Act of 1963). When Pub. L. 91-517 (The Developmental Disabilities Services and Facilities Construction Act) was passed and amended by Pub. L. 94-103 (The Developmentally Disabled Assistance and Bill of Rights Act) new regulations based on these laws were published in 45 CFR Parts 1385 and 1387 because the Rehabilitation Services Administration had been transferred to the Office of Human Development. Therefore, Part 415 which is obsolete, is removed from Title 45 of the Code of Federal Regulations.

(Catalog of Federal Domestic Assistance Program No. 13632)

Dated: March 15, 1979.

Arabella Martinez,
Assistant Secretary for Human Development Services.

Approved: April 11, 1979.

Joseph A. Califano, Jr.,
Secretary.

[FR Doc. 79-11948 Filed 4-16-79; 8:45 am]

BILLING CODE 4110-92-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1100

Statement for the Guidance of the Public—Organization, Procedure and Availability of Information

AGENCY: National Foundation on the Arts and the Humanities.

ACTION: Final rule.

SUMMARY: This revision updates the existing regulations to reflect changes in organization and location of the National Endowment for the Arts and the National Endowment for the Humanities.

EFFECTIVE DATE: May 25, 1979.

ADDRESS: National Foundation on the Arts and the Humanities, Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Robert Wade, General Counsel, National Endowment for the Arts, 2401 E Street, NW., Washington, D.C. 20506, telephone: 202/634-6588.

Part 1100 is revised in its entirety as follows:

PART 1100—STATEMENT FOR THE GUIDANCE OF THE PUBLIC—ORGANIZATION, PROCEDURE AND AVAILABILITY OF INFORMATION

Sec.

- 1100.1 Organization.
- 1100.2 Procedures and transaction of business.
- 1100.3 Availability of information to the public.
 - 1100.3-1 Statements of policy.
 - 1100.3-2 Current index.
 - 1100.3-3 Requests for records.
 - 1100.3-4 Procedures on requests for documents.
 - 1100.3-5 Foundation report of actions.
- 1100.4 Schedule of fees for search and duplication of records.
 - 1100.4-1 General schedule.
 - 1100.4-2 Schedule.

Authority: 5 U.S.C., as amended by Pub. L. 93-502. 1100 issued under 5 U.S.C. 552.

§ 1100.1 Organization.

(a) The National Foundation on the Arts and the Humanities was established by the National Foundation on the Arts and the Humanities Act of 1965 (79 Stat. 845; 20 U.S.C. 951). The Foundation is composed of a National Endowment for the Arts, a National Endowment for the Humanities, and a Federal Council on the Arts and the Humanities. Each Endowment is headed by a Chairman and has a National Council composed of 26 Presidential appointees, with the Chairman of the

Endowment also serving as Chairman of the Council. The purpose of the Foundation is to develop and promote a broadly conceived national policy of support for the humanities and the arts in the United States.

(b) The Endowments accomplish their missions primarily by providing financial assistance for projects in the arts and the humanities, including the making of fellowship and other awards to individuals as well as awards to nonprofit organizations. By statute, awards made to organizations by the National Endowment for the Arts may not exceed one-half the cost of the project, except that a percentage of the Arts Endowment's funds may be used for nonmatching grants to organizations which show that they have attempted unsuccessfully to secure funds equal to the amounts applied for.

(c) The organizational arrangement of the Foundation is as follows:

(1) *National Endowment for the Arts*—(i) *Office of the Chairman.* The Endowment is headed by the Chairman, who is also Chairman of the National Council on the Arts and a member of the Federal Council on the Arts and the Humanities. The Chairman, with the advice of the National Council on the Arts and the Federal Council on the Arts and the Humanities, is responsible for establishing Endowment policies and for developing and carrying out programs to provide support for projects and productions in the arts. The Chairman is assisted by two Deputy Chairmen, who are appointed by him. They are the Deputy Chairman for Policy and Planning and the Deputy Chairman for Programs.

(ii) *Program Activities of the Arts Endowment.* The activities of the Endowment are carried out with the aid of the following program offices:

- (A) Architecture, Planning and Design
- (B) Dance
- (C) Education
- (D) Expansion Arts
- (E) Federal State Partnership
- (F) Folk Arts
- (G) Literature
- (H) Media Arts
- (I) Museums
- (J) Music
- (K) Special Projects
- (L) Theatre
- (M) Visual Arts

Each of the above offices assists the Chairman in developing programs to provide support for activities in its area of interest.

(2) *National Endowment for the Humanities*—(i) *Office of the Chairman.* The Endowment is headed by the

Chairman, who is also Chairman of the National Council on the Humanities and a member of the Federal Council on the Arts and the Humanities. The Chairman, with the advice of the National Council on the Humanities and the Federal Council on the Arts and the Humanities, is responsible for establishing Endowment policies and for developing and carrying out programs to provide support for research in the humanities, for strengthening the research potential of the United States in the humanities, or providing fellowships for training in the humanities, for fostering the interchange of information in the humanities and for fostering public understanding and appreciation of the humanities. The Chairman is assisted by a Deputy Chairman, who is appointed by him.

(ii) Program Activities of the Humanities Endowment.

(A) The program activities of the Endowment are carried out through three divisions:

(1) The Division of Research and Publication.

(2) The Division of Fellowships and Stipends.

(3) The Division of Education and Special Projects.

(B) The Division of Research and Publication supports research and programs to strengthen the research potential of the United States, as well as to encourage the preparation of scholarly works in the humanities.

(C) The Division of Fellowships and Stipends supports individual scholarship and training by providing individuals with time uninterrupted by other responsibilities.

(D) The Division of Education and Special Projects provides support primarily to institutions—schools, colleges, universities, museums, public agencies, and private nonprofit groups to increase public understanding and appreciation of the humanities.

§ 1100.2 Procedures and transaction of business.

(a) *Inquiries and transaction of business.* All inquiries, submittals or requests should be addressed as follows: (1) Those involving the work of the National Endowment for the Arts should be addressed to the National Endowment for the Arts, Washington, D.C. 20506, or a member of the public may call at the Endowment's offices at 2401 E Street, N.W., Washington, D.C. during normal business hours which are 9 a.m. to 5:30 p.m., Monday through Friday; (2) requests involving the National Endowment for the Humanities should be addressed to the National

Endowment for the Humanities, Washington, D.C. 20506, or a member of the public may call at the Endowment's offices at 806 15th Street, N.W., Washington, D.C. during normal business hours which are 9 a.m. to 5:30 p.m., Monday through Friday. If a person is uncertain as to which organization an inquiry should be addressed, he should address his inquiry to the National Foundation on the Arts and the Humanities, Washington, D.C. 20506.

(b) *General method of functioning, procedures, forms, descriptions of programs.* In general, the Endowments provide financial support for activities in the arts and humanities on the basis of applications submitted by the person or organization desiring support. In general, such awards are made on a merit basis after a review process involving staff members and outside experts. The endowments publish various announcements and booklets describing their programs and explaining their procedures. "Guide to Programs—National Endowment for the Arts, 1977/1978" provides a comprehensive description of the programs, functions and procedures of the National Endowment for the Arts. Forms or instructions for application to participate in the programs of the Endowment are obtainable on request. All program announcements, publications or application forms may be obtained by applying either to the National Endowment for the Arts or the National Endowment for the Humanities or by calling in person at their Washington offices.

§ 1100.3 Availability of information to the public.

§ 1100.3-1 Statement of policy.

(a) The Chairman of the National Endowment for the Arts and the Chairman of the National Endowment for the Humanities are responsible for effective administration of the provisions of Pub. L. 89-487, as amended. The Chairman of each Endowment shall carry out this responsibility through the program and the officials as hereinafter provided in this Part.

(b) In addition, the Chairman of each Endowment, pursuant to his responsibility hereby directs that every effort be expended to facilitate the maximum expedited service to the public with respect to the obtaining of information and records. Accordingly, members of the public may make requests for information and records in accordance with the provisions of § 1100.3-3 of this Part.

§ 1100.3-2 Current Index.

(a) Each Endowment shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated and which is required to be made available pursuant to 5 U.S.C. 552(a) (1) and (2). Publication of such indices has been determined by the Foundation to be unnecessary and impracticable. The indices shall, nonetheless, be provided to any member of the public at a cost not in excess of the direct cost of duplication of any such index upon request therefore made in accordance with § 1100.3-3 of this Part.

(b) The index for each Endowment shall be available at the Office of the General Counsel, National Endowment for the Arts and the Office of the General Counsel, National Endowment for the Humanities respectively.

§ 1100.3-3 Requests for records.

(a) Requests for access to records of the National Endowment for the Arts and the National Endowment for the Humanities may be filed by mail or in person with the Deputy Chairman for Policy and Planning of the Arts Endowment or the Deputy Chairman of the Humanities Endowment between 9 a.m. and 5:30 p.m., Monday through Friday, except holidays.

(b) All requests should reasonably describe the record or records sought: and

(c) Any request submitted in writing should be clearly identified as a request made pursuant to the Freedom of Information Act by labelling the envelope with the letters FOIA.

§ 1100.3-4 Procedures on requests for documents.

(a) *Determination of compliance with requests for document.* (1) Upon request by any member of the public for documents made in accordance with the rules of this part the Deputy Chairman for Policy and Planning of the Arts Endowment or the Deputy Chairman of the Humanities Endowment receiving the request or his delegate in his absence, shall determine whether or not such request shall be granted.

(2) Except as provided in paragraph (c) of this section, such determination shall be made by the Deputy Chairman for Policy and Planning of the Arts Endowment or the Deputy Chairman of the Humanities Endowment receiving the request within ten (10) days (excepting Saturdays, Sundays and legal public holidays) after receipt by the Endowment of such request.

(3) The Deputy Chairman for Policy and Planning of the Arts Endowment or the Deputy Chairman of the Humanities Endowment shall immediately notify the party making such request of the determination made, the reasons therefore, and, in the case of a denial of such request, shall notify the party of his right to appeal that determination to the Chairman of the involved Endowment.

(b) *Appeals from adverse determination (denial of request).* (1) Any party whose request for documents or other information pursuant to this part has been denied in whole or in part by the Deputy Chairman for Policy and Planning of the Arts Endowment or the Deputy Chairman of the Humanities Endowment may appeal such determination. Any such appeal shall be addressed to the Chairman, National Endowment for the Arts, Washington, D.C. 20506 or the Chairman, National Endowment for the Humanities, Washington, D.C. 20506, and shall be submitted within a reasonable time following receipt by the party of notification of the initial denial by the Deputy Chairman for Policy and Planning of the Arts Endowment or the Deputy Chairman of the Humanities Endowment in the case of a total denial of the request or within a reasonable time following receipt of any of the records requested in the case of a partial denial. In no case shall an appeal be filed later than ten (10) working days following receipt of notification of denial or receipt of a part of the records requested.

(2) Upon appeal from any denial or partial denial of a request for documents by the Deputy Chairman for Policy and Planning of the Arts Endowment or the Deputy Chairman of the Humanities Endowment, the Chairman of the involved Endowment or the Chairman's specific delegate in his absence, shall make a determination with respect to that appeal within twenty (20) days (excepting Saturdays, Sundays and legal public holidays) after receipt by the Endowment of such appeal, except as provided in paragraph (c) of this section. If, on appeal, the denial is upheld, either in whole or in part, the Chairman shall notify the party submitting the appeal and shall notify such person of the provisions of 5 U.S.C. 552(a)(4)(B), as amended, regarding judicial review of such determination upholding the denial. Notification shall also include the statement that the determination is that of the Chairman, National Endowment for the Arts, or the Chairman, National Endowment for the Humanities, and the name of the Chairman.

(c) *Exception to time limitation.* In unusual circumstances as specified in this paragraph, the time limits prescribed with respect to initial actions or actions on appeal may be extended by written notice from the Deputy Chairman for Policy and Planning of the Arts Endowment or the Deputy Chairman of the Humanities Endowment receiving the request to the person making the request. Such notice shall set forth the reason for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this paragraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separated from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(d) *Effect of failure by either Endowment to meet the time limitation.* Failure by either Endowment to deny or grant any request for documents within the time limits prescribed by the FOIA (5 U.S.C. 552, as amended) and these regulations shall be deemed to be an exhaustion of the administrative remedies available to the person making the request.

§ 1100.3-5 Foundation report of actions.

On or before March 1 of each calendar year, the National Foundation on the Arts and the Humanities shall submit a report of its activities with regard to public information requests during the preceding calendar year to the Speaker of the House of Representatives and to the President of the Senate. The report shall include:

(a) The number of determinations made by the National Foundation on the Arts and the Humanities not to comply with requests for records made to the agency under the provisions of this part and the reasons for each such determination.

(b) The number of appeals made by persons under such provisions, the result of such appeals, and the reason for the action upon each appeal that results in the denial of information.

(c) The names and titles or positions of each person responsible for the denial of records requested under the provisions of this part and the number of instances of participation for each.

(d) The results of each proceeding conducted pursuant to 5 U.S.C. 552(a)(4)(F), as amended, including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken.

(e) A copy of every rule made by the Foundation implementing the provisions of the FOIA.

(f) A copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section.

(g) Such other information as indicates efforts to administer the provisions of the FOIA, as amended.

§ 1100.4 Schedule of fees for search and duplication of records.

§ 1100.4-1 General Schedule.

While most information will be furnished promptly at no cost as a service to the general public, fees will be charged if the cost of search and duplication warrants.

§ 1100.4-2 Schedule.

Fees which may be charged by the Foundation for search and duplication of records are as follows:

(a) *Duplication fees.* \$2 for the first six (6) pages, five (5¢) cents per page thereafter for photocopying.

(b) *Search fees.* \$8 per hour to search records for specific documents plus transportation costs of personnel arising from searches for requested information.

Livingston L. Biddle, Jr.,

Chairman, National Endowment for the Arts.

Joseph Duffey,

Chairman, National Endowment for the Humanities.

[FR Doc. 79-11928 Filed 4-16-79; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1151

Nondiscrimination on the Basis of Handicap; Final Rule

AGENCY: National Endowment for the Arts.

ACTION: Final Rule.

SUMMARY: These regulations implement section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, 29 U.S.C. 794.

Section 504 provides that "no otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." The regulations define and forbid acts of discrimination against qualified handicapped persons in programs and activities receiving federal financial assistance from the National Endowment for the Arts. As employers, recipients are prohibited from engaging in discriminatory employment practices on the basis of handicap and must make reasonable accommodation to the handicaps of employees unless the accommodation would cause the employer undue hardship. As providers of services, recipients are required to make programs operated in existing facilities accessible to handicapped persons, to ensure that new facilities are constructed in a manner readily accessible to handicapped persons, and to operate their programs in a nondiscriminatory manner.

EFFECTIVE DATE: May 25, 1979.

FOR FURTHER INFORMATION CONTACT:

Robert Wade, General Counsel, National Endowment for the Arts, 2401 E Street, N.W., Washington, D.C. 20506, 202-634-6588.

SUPPLEMENTARY INFORMATION: On April 13, 1978, the National Endowment for the Arts published proposed regulations regarding Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance from the National Endowment for the Arts, 43 FR 15458, (1978). Public comments were invited through September 1, 1978. All comments received through November 12, 1978 were considered. Written comments were received from approximately 100 sources. In addition, members of the Endowment's Section 504 Task Force representing organizations of handicapped persons, arts service organizations, and the cultural field generally, met in Washington on October 12, 1978 in order to review comments received from the public regarding the proposed regulations. Public comments and comments of the Section 504 Task Force are summarized as "Comments Leading to Changes in the Regulations" and

"Comments Not Leading to Changes in the Regulations."

Comments Leading to Changes in the Regulations

1. It was suggested that § 1151.5 regarding the effect of state or local law be clarified and written in simpler, more direct language. The substituted language adopted in the final regulations should be clearer and easier to understand.

2. It was pointed out that the Summary of Proposed Rules preceding the draft regulations states that "Subpart A of the proposed regulations sets forth general definitions and uniform procedures for the enforcement of section 504." The comment further points out that "nowhere in Subpart A is mention made concerning the Endowment's intentions should recipients be found in noncompliance." Subpart D of the proposed and final regulations includes provisions regarding enforcement of section 504. For additional clarification in connection with the question of Endowment enforcement and compliance procedures under section 504, an Appendix A is added to the regulations setting forth the Endowment's procedures for compliance under Title VI of the Civil Rights Act of 1964. These procedures will be adopted for the purpose of enforcing section 504.

3. It was recommended that § 1151.11 (b) (4), i.e., the portion of the definition of "handicapped person" which further defines the phrase, "is regarded as having an impairment" be clarified. Also, it was suggested that examples regarding this subsection be included in the regulations. This part of the statutory and regulatory definition of handicapped person includes any person who is regarded as having a physical or mental impairment that substantially limits one or more major life activities. As stated in Appendix A to regulations promulgated by the Department of Health, Education and Welfare (HEW), 42 FR 22686, (1977), this part includes many persons who are ordinarily considered to be handicapped but who do not technically fall within the first two parts of the statutory definition, such as persons with a limp. This part of the definition also includes some persons who might not ordinarily be considered handicapped, such as persons with disfiguring scars, as well as persons who have no physical or mental impairment but are treated by a recipient as if they were handicapped. It should be noted that the definition of the term "handicapped person" utilized by the Act for purposes of section 504 was

amended by the Comprehensive Rehabilitation Services Amendments of 1978, Pub. L. 95-602, to exclude from the definition, in connection with employment, any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to the property or safety of others. This amendment is consistent with the position taken by HEW regarding this issue and reflects the findings included in a legal opinion issued by the Attorney General.

4. The Task Force generally agreed that the language included in § 1151.16(b) was confusing and could be drafted in a simpler manner. The substituted language should be clearer and easier to understand.

5. It was pointed out that in section 1151.17—Specific discriminatory actions prohibited, a subsection included in HEW guidelines prohibiting a recipient from selecting the site or location of a facility that has a discriminatory effect on handicapped persons was omitted from the proposed regulations. The subsection in question appears as § 1151.17(d) of the final regulations.

6. Many comments were received in connection with § 1151.18—Illustrative examples. These comments included suggestions regarding placement of the examples within the regulations. It specifically was recommended during the October 12th Task Force meeting that examples applicable to different art forms be included as separate parts in the regulations. While we seriously considered following this suggestion, in light of the technical assistance materials to be prepared and made available to recipients, inclusion of additional examples in the regulations applicable to the visual and performing arts would appear to be unnecessary. Other commenters suggested that the examples to be left out of the regulations. Various "how to" and technical questions were asked in connection with this section. It is believed that recipients can arrive at the most effective responses to such questions by consulting with local handicap organizations. In weighing the comments it was decided to retain the section on illustrative examples in the same form as appeared in the draft regulations. Various editorial and grammatical changes have been made to reflect the comments received.

7. The largest number of comments were received in connection with § 1151.22—Existing facilities. Several

organizations urged inclusion in the regulations of "Program Accessibility in Historic Properties" written by the Department of Interior. In connection with accessibility to historic properties, the Endowment intends to adopt and include in its regulations a uniform standard currently being developed by interested federal agencies.

8. Several groups suggested that the time periods for compliance set forth § 1151.22(c) should conform to those included in HEW regulations. These time periods have been revised to reflect the standards set forth in HEW guidelines.

9. It was suggested that the words "and usable by" be added to § 1151.22(a). This phrase was omitted inadvertently from the draft regulations and has been added.

10. It was suggested that § 1151.32(b)(2) listing some of the actions that constitute reasonable accommodation include use of telecommunication devices and amplifiers on telephones. Appropriate language has been added.

11. It was suggested that § 1151.33—Employment criteria, be expanded to reflect the corresponding more detailed section included in HEW regulations. Section 1151.33 has been modified to reflect the provisions of § 84.13 of HEW regulations 42 FR 22680, (1977).

12. One commenter stated that § 1151.44—Endowment enforcement and compliance procedures was unclear in that it does not specify who may bring a complaint, in what manner the complaint would be handled, and what standards would be employed in determining the validity of the complaint. Section 1151.44 of the proposed regulations incorporates by reference Endowment compliance procedures applicable to Title VI of the Civil Rights Act of 1964 and found at 45 CFR 1110.8-1110.11. The final regulations include an Appendix A setting forth the specific procedures.

13. A number of organizations made the following general comments regarding the regulations: (1) It was suggested that the final regulations be made available in braille and cassette tapes and that their availability be announced in the final regulations; (2) a number of groups indicated that certain terms and phrases are ambiguous and suggested that the language be more specific; and, (3) workshops scheduled at various locations were suggested as a means of helping arts organizations understand and plan compliance with the regulations.

The final regulations are available in braille and cassette tapes. Requests for

copies of the regulations should be addressed to Office of the General Counsel, National Endowment for the Arts, 2401 E Street, N.W., Washington, D.C. 20506.

Comments Not Leading to Changes in the Regulations

1. In § 1151.3(e), it was recommended that the definition or "recipient" include a definition of "subrecipients," i.e., programs and activities with subgrants or subcontracts from recipients. The definition of "recipients" includes agencies, institutions, organizations or other entities to which federal assistance is extended through another recipient.

2. It was urged that procurement contracts and contracts of insurance or guaranty be included in the § 1151.3(f) definition of "federal financial assistance." Procurement contracts are covered by the Department of Labor's regulation under section 503 of the Rehabilitation Act. Endowment contracts that are not considered procurement contracts, i.e., contracts of assistance or cooperative agreements would not fall within the "procurement" exclusion and will be reviewed on an ad hoc basis regarding coverage under section 504.

The proposed regulation's exemption of contracts of insurance or guaranty has been retained. This is in accordance with the following language included in Appendix A of HEW's final regulations, 42 FR 22685, (1977). "There is no indication however, in the legislative history of the Rehabilitation Act of 1973 or of the amendment to that Act in 1974, that Congress intended section 504 to have a broader application in terms of federal financial assistance than other civil rights statutes. Indeed, Congress directed that section 504 be implemented in the same manner as Titles VI and IX. In view of the long established exemption of contracts of insurance or guaranty under Title VI, we think it unlikely that Congress intended section 504 to apply to such contracts."

3. In connection with § 1151.4 regarding the requirement that a recipient notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing that it does not discriminate on the basis of handicap in violation of section 504, one group questioned why "those with impaired vision or hearing" are singled out. This sentence adopts the language appearing in § 84.8 of HEW regulations, 42 FR 22680, (1977). It would seem that the words "including those with impaired vision or hearing" appear in

that section in order to emphasize a recipient's obligation to ensure that notice is not limited solely to print media.

4. It was recommended that § 1151.12(a) defining qualified handicapped person should read, "a qualified handicapped person means with respect to employment, a handicapped person who, with or without reasonable accommodation, can perform the essential functions of the job in question." The definition as presently drafted implicitly includes a qualified handicapped person who requires no accommodation to be made to his or her particular needs. It was suggested that the definition of qualified handicapped person with respect to services is inadequate since the traditional eligibility requirements, i.e., vision in order to view an exhibition of visual art, would exclude a visually impaired person. This comment misconstrues the phrase "essential eligibility requirements" for the receipt of such services included in § 1151.12(b). As used in that section, eligibility requirements with respect to cultural events would mean paying the standard price of admission, i.e., buying a ticket for a ballet performance or symphony concert. Finally, one commenter stated that the definition of handicap is "so broad as to be all inclusive, and that the definition as it now stands includes nearly all Americans."

Guidelines issued by HEW, 43 FR 2132, (1978), in accordance with Executive Order 11914 include the definition of handicapped person which conforms to the statutory definition of handicapped person applicable to section 504, as set forth in section 111(a) of the Rehabilitation Act Amendments of 1974, Pub. L. 93-516. Endowment proposed section 504 regulations adopt the statutory definition of handicapped persons as required by HEW guidelines. In response to comments regarding the broad definition of handicapped person, it was determined by HEW that there was no flexibility within the statutory definition to limit the term to persons who have those severe, permanent, or progressive conditions that are most commonly regarded as handicaps.

5. One commenter expressed concern regarding use of the word "appropriate" in § 1151.16(c). A question was raised in connection with how an appropriate setting would be determined and by whom. We believe that this word affords recipients maximum flexibility in connection with meeting their obligations under the regulations and satisfying the needs of the handicapped persons they serve. It is hoped that prior

to determining what settings are "appropriate to the needs of handicapped persons" recipients will make every effort to obtain maximum input from organizations representing handicapped persons.

6. In connection with § 1151.17—Specific discriminatory actions prohibited, it was suggested that subsections (a) (3) and (4) include the phrase "similar in benefit" in addition to the word "effective" in order to ensure that recipients provide assistance and services that are similar in benefit. Addition of this language would be unnecessary since § 1151.17(a)(4) specifically prohibits the provision of different benefits or services to handicapped persons.

It also was pointed out that as used throughout § 1151.17 the words "equal" or "effective" would be difficult to interpret. As indicated in Appendix A of HEW regulations, 42 FR 22687, (1977), the term "equally effective" is intended to encompass the concept of equivalent, as opposed to identical services and to acknowledge that in order to meet the individual needs of handicapped persons to the same extent that the corresponding needs of nonhandicapped persons are met, adjustments to regular programs or the provision of different programs may be necessary. To be equally effective, however, an aid, benefit or service need not produce equal results; it merely must afford an equal opportunity to achieve equal results. Consequently, although a blind person may be unable to see a ballet and a deaf person may be unable to hear a concert, no handicapped person may be excluded from a program because of the lack of an appropriate aid. Recipients need not have all such aids on hand at all times, as long as a schedule is established and adhered to regarding for example, availability of a reader.

7. It was noted that § 1151.17(c) (1), (2), (3) does not make clear whether the requirement applies generally to the administration of the receiving organization or to the specific use of federal funds. According to HEW guidelines, 43 FR 2134, (1978), the main application of this provision is to state agencies that receive federal funds and then distribute the funds to other entities. These state agencies are obligated to develop methods of administering the distribution of federal funds so as to ensure that handicapped persons are not subjected to discrimination on the basis of handicap either by the second-tier recipients or by the manner in which the funds are distributed. The prohibitions of this

paragraph, as well as of paragraph (b)(1), apply not only to direct actions of a recipient but also to actions committed through contractual agreements or similar arrangements. This provision is based on the premise that a recipient should not be able to do indirectly what it is prohibited from doing directly.

8. In connection with the portion of the regulations regarding program accessibility, one commenter objected to the inclusion of "physical accessibility" information under the head "program accessibility." It was suggested that program accessibility should refer to program content and format and that the regulations should be organized according to the categories of physical accessibility, program accessibility and employment.

HEW's Section 504 Policy Interpretation No. 3, 43 FR 36034, (1978), states that "the section 504 regulation was carefully written to require 'program accessibility' not 'building accessibility' thus allowing recipients flexibility in selecting the means of compliance." Consequently, physical or building accessibility constitutes one aspect of the general program accessibility requirement included in the regulations, i.e., program accessibility for the mobility impaired. According to Appendix A of HEW regulations, 42 FR 22689, (1977), structural changes in existing facilities are required only where there is no other feasible way to make the recipient's program accessible or usable.

9. It was suggested that some consideration be given to exempting organizations which lease facilities from program accessibility requirements as long as bona fide efforts are made to use a hall that more nearly complies with the requirements of the regulations. According to HEW Policy Interpretation No. 3, 43 FR 36034, (1978), "because the standard for program accessibility is flexible" the regulation does not allow for waivers. Performing arts groups which lease space should explore possibilities of periodically offering performances in alternative accessible spaces.

10. In connection with § 1151.23—New Construction, it was suggested that language be added to include new facilities or "parts of facilities." This would be unnecessary since parts of facilities would be covered by the second sentence of § 1151.23 regarding alterations to existing facilities.

11. It was suggested that language be included regarding consultation with handicapped organizations in connection with plans to construct or alter facilities. Of course, while

maximum consultation with respect to all aspects of carrying out the regulations is encouraged and considered desirable, it would appear redundant to include the requested language in light of reference in § 1151.23 to use of ANSI standards.

12. Several commenters expressed concern regarding use of vague, ambiguous terms in § 1151.32—Reasonable accommodation, such as "reasonable," "reasonable accommodation," and "undue hardship." Guidance regarding the meaning of "reasonable accommodation" may be found in § 1151.32(b). Section 1151.32(b) lists some actions that constitute reasonable accommodation. It should be pointed out that the list is neither all-inclusive nor meant to suggest that employers must follow all of the actions listed. Paragraph (c) of the section sets forth factors that the Endowment will consider in determining whether an accommodation necessary to enable an applicant or employee to perform the duties of a job would impose an undue hardship. The weight given to each of these factors in making the determination as to whether an accommodation constitutes undue hardship will vary depending on the facts of a particular situation. Thus, a small ballet company might not be required to expend more than a nominal sum to accommodate a deaf employee while it would not constitute an undue hardship for a large state arts agency to accommodate a deaf employee by providing an interpreter.

13. One commenter suggested that the exceptions to the prohibition against preemployment inquiries included in § 1151.34(b) could lead to abuse. Section 1151.34(a) specifies limited instances in which preemployment inquiries will be considered permissible. The section goes on to specify certain safeguards that must be followed by the employer. These safeguards should serve to limit the opportunities for abuse in connection with preemployment inquiries.

14. It was suggested that transferees of personal property purchased with federal financial assistance be required to submit assurances of compliance under section 1151.41. Transferees of personal property purchased with federal financial assistance would not fall within the definition of recipients included in § 1151.3(e) of the regulations. Consequently, requiring transferees of personal property to submit assurances of compliance would extend the coverage of the regulations beyond their intended scope.

15. Several comments were received in connection with § 1151.42—Self-evaluation. Most of the comments consisted of questions regarding the form of the self-evaluation, administration of the self-evaluation process, and whether submission of self-evaluations are required to be included in applications. Self-evaluations are to be conducted by recipients for their own benefit in order to determine whether their policies or practices may discriminate against handicapped persons and to initiate steps to modify any discriminatory policies and practices and their effects. This section was included to encourage recipients to make initial assessments of their practices regarding handicapped persons as a first step towards compliance with the regulations. Self-evaluations are for the benefit of recipients and need not be submitted with grant applications.

As indicated in § 1151.42, self-evaluations are to be completed by recipient organizations within six months after the effective date of the regulations. A question has been raised regarding the time-frame for preparation of self-evaluations by new recipients of Endowment funds after the effective date of the regulations. Subsequent to the effective date of the regulations, it is understood that prior to applying for Endowment financial assistance, new applicants will have given preliminary consideration to methods of making their proposed project or activity accessible to handicapped persons.

The primary authors of this rulemaking are: Robert Wade, General Counsel, and Susan Liberman, Assistant to the General Counsel, telephone, 202-634-6586.

Dated: April 12, 1979.

Livingston L. Biddle, Jr.,
Chairman, National Endowment for the Arts.

In consideration of the foregoing, a new part 1151 is added to Title 45 of the Code of Federal Regulations to read as follows:

Subpart A—General Provisions

- Sec.
- 1151.1 Purpose.
 - 1151.2 Application.
 - 1151.3 Definitions.
 - 1151.4 Notice.
 - 1151.5 Inconsistent state laws and effect of employment opportunities.
 - 1151.6-1151.10 [Reserved]

Subpart B—Standards for Determining Who Are Handicapped Persons

- 1151.11 Handicapped Person.
- 1151.12 Qualified Handicapped Person.
- 1151.13-1151.15 [Reserved]

Subpart C—Discrimination Prohibited

General

- 1151.16 General prohibitions against discrimination.
- 1151.17 Specific discriminatory actions prohibited.
- 1151.18 Illustrative examples.
- 1151.19-1151.20 [Reserved]

Program Accessibility

- 1151.21 Discrimination prohibited.
- 1151.22 Existing facilities.
- 1151.23 New Construction.
- 1151.24 [Reserved—Historic Properties]
- 1151.25-1151.30 [Reserved]

Employment

- 1151.31 Discrimination prohibited.
- 1151.32 Reasonable accommodation.
- 1151.33 Employment criteria.
- 1151.34 Preemployment inquiries.
- 1151.35-1151.40 [Reserved]

Subpart D—Enforcement

- 1151.41 Assurances required.
- 1151.42 Self-evaluation.
- 1151.43 Adoption of grievance procedures.
- 1151.44 Endowment enforcement and compliance procedures.
- 1151.45-1151.50 [Reserved]

Authority: Executive Order 11914; sec. 504, Rehabilitation Act of 1973, as amended (Pub. L. 93-112) (29 U.S.C. 794), Comprehensive Rehabilitation Services Amendments of 1978, (Pub. L. 95-602).

Subpart A—General Provisions

§ 1151.1 Purpose.

The purpose of this part 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 financial assistance.

§ 1151.2 Application.

This part applies to each recipient of financial assistance from the National Endowment for the Arts and to each program or activity that receives or benefits from such assistance.

§ 1151.3 Definitions.

As used in this part, the term:

- (a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, (Pub. L. 93-516, 29 U.S.C. 706 *et seq.*) and the Comprehensive Rehabilitation Services Amendments of 1978, (Pub. L. 95-602).
- (b) "Section 504" means section 504 of the Act.
- (c) "Endowment" means the National Endowment for the Arts.
- (d) "Chairman" means the Chairman, National Endowment for the Arts.
- (e) "Recipient" means any state or its political subdivision, any

instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(f) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Endowment provides or otherwise makes available assistance in the form of:

- (1) Funds;
- (2) Services of federal personnel; or
- (3) Real and personal property or any interest in or use of such property, including:

(i) Transfers of leases of such property for less than fair market value or for reduced consideration; and,

(ii) proceeds from a subsequent transfer or lease of such property if the federal share of its fair market value is not returned to the Federal Government.

(g) "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.

§ 1151.4 Notice.

(a) A recipient shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or employment in, its programs and activities. Methods of initial and continuing notification may include the posting of notices, publication in print, audio, and visual media, placement of notices in a recipient's publication, and distribution of other written and verbal 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.

§ 1151.5 Inconsistent State laws and effect of employment opportunities.

(a) Recipients are not excused from complying with this part as a result of state or local laws which limit the eligibility of handicapped persons to receive services or to practice a profession or occupation.

(b) The presence of limited employment opportunities in a particular profession does not excuse a recipient from complying with the regulation. For example, a music school receiving Endowment financial assistance could not deny admission to a qualified blind applicant because a blind singer may experience more difficulty than a nonhandicapped singer in finding a job.

§§ 1151.6-1151.10 [Reserved]

Subpart B—Standards for Determining Who Are Handicapped Persons.

§ 1151.11 Handicapped person.

(a) "Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. For purposes of section 504, in connection with employment, this term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to the property or safety of others.

(b) As used in paragraph (a) of this section, the phrase:

(1) "Physical or mental impairment" means:

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

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional and mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not

limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" means functions such as caring for one's self, performing manual 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;

(iii) Has none of the impairments defined in paragraph (b)(1) of this section but is treated by a recipient as having such an impairment.

§ 1151.12 Qualified handicapped person.

"Qualified handicapped person" means:

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

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

§ 1151.13-1151.15 [Reserved]

Subpart C—Discrimination Prohibited General

§ 1151.16 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance.

(b) These regulations do not prohibit the exclusion of nonhandicapped persons or persons with a specific type of handicap from the benefits of a program limited by federal statute or

executive order to handicapped persons or persons with a different type of handicap.

(c) Recipients shall take appropriate steps to insure that no handicapped individual is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination in any program receiving or benefiting from Endowment financial assistance because of the absence of appropriate auxiliary aids for individuals with impaired sensory, manual, or speaking skills.

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

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

§ 1151.17 Specific discriminatory actions prohibited.

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

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

(2) 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;

(3) 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;

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

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

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

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

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

(c) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(1) That have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap;

(2) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons; or

(3) That perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.

(d) A recipient may not, in determining the site or location of a facility, make selections:

(1) That have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from federal financial assistance; or

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

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

§ 1151.18 Illustrative examples.

(a) The following examples will illustrate the application of the foregoing provisions to some of the activities funded by the National Endowment for the Arts.

(1) A museum exhibition catalogue or small press editions supported by the Endowment may be made usable by the blind and the visually impaired through cassette tapes, records, discs, braille, readers and simultaneous publications;

(2) A theatre performance supported by federal funds may be made available to deaf and hearing impaired persons through the use of a sign language interpreter or by providing scripts in advance of the performance.

(3) A performing arts organization receiving federal funds for a specific program offered in an inaccessible facility may arrange to provide a reasonable opportunity for that program to be offered to the public at large in an alternative accessible space; e.g., a theatre offering four different plays a season may offer at least one performance of each play in an alternative accessible space.

(4) Recipients of federal funds should make every effort to assure that they do not support organizations or individuals that discriminate;

(5) A handicapped person with experience and expertise equal to qualification standards established by a planning or advisory board may not be excluded from participation on the board on the basis of handicap. This does not mean that every planning or advisory board necessarily must include a handicapped person.

(b) Despite the existence of permissible separate or different programs, e.g., periodic performances in alternative accessible spaces, a physically handicapped person who wishes to be, and can be, escorted to a seat, may not be denied such access to an otherwise inaccessible theatre.

(c) State arts agencies are obligated to develop methods of administering federal funds so as to ensure that handicapped persons are not subjected to discrimination on the basis of handicap either by sub-grantees or by the manner in which the funds are distributed.

(d) In the event Endowment funds are utilized to construct, expand, alter, lease or rent a facility, the benefits of the programs and activities provided in or through that facility must be conducted in accordance with these regulations, e.g., a museum receiving a grant to renovate an existing facility must assure that all museum programs and activities conducted in that facility are accessible to handicapped persons.

(e) In carrying out the mandate of section 504 and these implementing regulations recipients should make every effort to administer Endowment assisted programs and activities in a setting in which able-bodied and disabled persons are integrated, e.g., tours made available to the hearing impaired should be open to the public at large and everyone should be permitted

to enjoy the benefits of a tactile experience in a museum.

§§ 1151.19-1151.20 [Reserved]

Program Accessibility

§ 1151.21 Discrimination prohibited.

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

§ 1151.22 Existing facilities.

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

(b) A recipient may comply with the requirement of paragraph (a) of this section through alteration of existing facilities, the construction of new facilities, 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 sixty days of the effective date of this part except that where structural changes are necessary to make programs or activities in existing facilities accessible such changes shall be made as soon as possible but in no event later than three years after the effective date of this part.

(d) Transition plan. In the event structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within one year of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons.

Upon request, the recipient shall make available for public inspection a copy of the transition plan. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

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

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

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

§ 1151.23 New construction.

(a) New facilities shall be designed and constructed to be readily accessible to and usable by handicapped persons. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

(b) American National Standards Institute accessibility standards. Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc., (ANSI A 117.1—1961 [R 1971]) (Copies obtainable at \$2.75 each from American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018, single copies available free from Architectural and Transportation Barriers Compliance Board, Washington, D.C. 20201, or the National Easter Seal Society, 2023 West Ogden Avenue, Chicago, Illinois 60612) shall constitute compliance with paragraph (a) of this section. Departures from the ANSI standards by the use of comparable standards shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

§ 1151.24 [Reserved—Historic Properties]

§§ 1151.25—1151.30 [Reserved]

§ 1151.31 Discrimination prohibited.

(a) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives or benefits from federal financial assistance.

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

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

(d) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the 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 absences, sick leave, or any other leave;

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

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

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

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

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

§ 1151.32 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation

would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include:

(1) Making facilities used by employees readily accessible to and usable by handicapped persons; and

(2) Job restructuring, part-time or modified work schedules, acquisition, or modification of equipment or devices, such as use of telecommunication devices and amplifiers on telephones, the provision of readers or interpreters, and other similar actions.

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

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

§ 1151.33 Employment criteria.

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

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

(2) Alternative job-related tests or criteria are unavailable.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or other factors relevant to adequate performance of the job in question.

§ 1151.34 Preemployment inquiries.

A recipient may not, except as provided below, conduct a preemployment medical examination, make preemployment inquiry as to whether the applicant is a handicapped person, or inquire as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(a) When a recipient is taking remedial action to correct the effects of

past discrimination, when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity, or when a recipient is taking affirmative action pursuant to section 504 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, provided, that:

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

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

(b) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided, that:

(1) All entering employees are subjected to such an examination regardless of handicap; and

(2) The results of such an examination are used only in accordance with the requirements of this part.

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

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

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

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

§ 1151.35-1151.40 [Reserved]

Subpart D—Enforcement

§ 1151.41 Assurances required.

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

(b) Duration of obligation.

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

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

(c) Covenants.

Where property is purchased or improved with federal financial assistance, the recipient shall agree to include in any instrument effecting or recording any transfer of the property a covenant running with the property assuring nondiscrimination for the period during which the real property is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

§ 1151.42 Self evaluation.

(a) A recipient shall within six months of the effective date of this part:

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

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

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

(4) Maintain on file, make available for public inspection, and provide to the Endowment upon request, for at least three years following completion of the self-evaluation:

(i) A list of the interested persons consulted;

(ii) A description of areas examined and any problems identified; and,

(iii) A description of any modifications made and of any remedial steps taken.

(5) The completed self-evaluation should be signed by a responsible official designated to coordinate the recipient's efforts in connection with this section.

§ 1151.43 Adoption of grievance procedures.

A recipient may adopt an internal grievance procedure in order to provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. A responsible official should be designated to coordinate the recipient's efforts in connection with this section. Such procedures need not be established with respect to complaints from applicants for employment.

§ 1151.44 Endowment enforcement and compliance procedures.

The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in section 1110.8-1110.11 of Part 1110 of this Title.

§§ 1151.45-1151.50 [Reserved]

[FR Doc. 79-11884 Filed 4-16-79; 8:45 am]
BILLING CODE 7537-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcast Services; Editorial Amendments Concerning Reregulation of Radio and TV Broadcasting

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Editorial corrections and clarifications in various rules on auxiliary antenna, remote control authorizations, auxiliary transmitters, and modifications of transmission systems adopted by previous Reregulation of Radio and TV Broadcasting Order.

EFFECTIVE DATE: April 25, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John W. Reiser, Broadcast Bureau, (202) 632-9660.