

provides for at least 10 consecutive hours of rest immediately preceding reporting to the hospital for availability for flight time.

(c) No flight crewmember may accrue more than 8 hours of flight time during any 24-consecutive hour period of a HEMES assignment, unless an emergency medical evacuation operation is prolonged. Each flight crewmember who exceeds the daily 8 hour flight time limitation in this paragraph must be relieved of the HEMES assignment immediately upon the completion of that emergency medical evacuation operation and must be given a rest period in compliance with paragraph (h) of this section.

(d) Each flight crewmember must receive at least 8 consecutive hours of rest during any 24 consecutive hour period of a HEMES assignment. A flight crewmember must be relieved of the HEMES assignment if he or she has not or cannot receive at least 8 consecutive hours of rest during any 24 consecutive hour period of a HEMES assignment.

(e) A HEMES assignment may not exceed 72 consecutive hours at the hospital.

(f) An adequate place of rest must be provided at, or in close proximity to, the hospital at which the HEMES assignment is being performed.

(g) No certificate holder may assign any other duties to a flight crewmember during a HEMES assignment.

(h) Each pilot must be given a rest period upon completion of the HEMES assignment and prior to being assigned any further duty with the certificate holder of—

(1) At least 12 consecutive hours for an assignment of less than 48 hours.

(2) At least 16 consecutive hours for an assignment of more than 48 hours.

(i) The certificate holder must provide each flight crewmember at least 13 rest periods of at least 24 consecutive hours each in each calendar quarter.

Issued in Washington, D.C., on June 3, 1985.

Donald D. Engen,

Administrator.

[FR Doc. 85-16971 Filed 7-15-85; 11:37 am]

BILLING CODE 4910-13-M

Forest Restoration Federal Register

Thursday
July 18, 1985

Part III

Department of the Interior

Bureau of Land Management

43 Parts 5400 and 5440

Procedures for Debarment of Timber Sale Contractors; Proposed Rule

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****43 CFR Parts 5400 and 5440****Sales of Forest Products; General and Conduct of Sales, Procedures for Debarment of Contractors**

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend provisions of the existing regulations in 43 CFR Part 5400, Sales of Forest Products; General, and Part 5440, Conduct of Sales. The Department of the Interior has determined that it is necessary to amend the existing regulations concerning debarment and suspension of timber sale contractors to provide notice and opportunity for a hearing to contractors who are subject to debarment, and to focus on the contractor's present and future responsibility, considering the circumstances provoking the proposed debarment. The provisions of the proposed rulemaking are similar to provisions in the revised Federal Procurement Regulations on debarment and suspension, and have been determined to be suitable for timber sale contracts and to meet the requirements of the law.

DATE: Comment period expires September 16, 1985. Comments received or postmarked after this date may not be considered in the decisionmaking process on a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Department of the Interior, Bureau of Land Management 1800 'C' Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Charles R. Frost, (202) 653-8864.

SUPPLEMENTARY INFORMATION: The Department of the Interior has determined that there are two shortcomings in the existing regulations on debarment of timber contractors at 43 CFR 5441.1(c). First, the regulations fail to focus on the purchaser's present responsibility as a contractor with the Bureau of Land Management. The proposed rulemaking would eliminate this problem by requiring a careful review of the financial integrity of the contractor, which is in doubt upon its failure to make payment by the expiration date of the contract. Debarment will be pursued only if, as a result of the review, the debarring official determines that the contractor's financial situation demonstrates its lack of present responsibility i.e., the

contractor is presently a bad risk for the government to do business with. Second, the regulations lack procedural safeguards, such as provisions for notice and opportunity to present evidence, in the process leading to debarment.

The existing regulation at 43 CFR 5441.1(c) provides for automatic debarment of defaulting contractors from all future Bureau of Land Management timber contracts until the default is cured. This proposed rulemaking would establish procedures for the Bureau to recognize mitigating and other circumstances relating to the contractor's present responsibility, and to assure the contractor due process of law.

This proposed rulemaking parallels the debarment procedures in Subpart 9.4 of the Federal Acquisition Regulation (48 FR 42102). These regulations meet the requirements of law and are well suited, as adapted herein, to the timber management program of the Bureau. The debarment provisions of the existing Federal Procurement Regulations have on occasion been used as the authority for debarring a timber purchase contractor, so the suitability of that segment of the Federal Procurement Regulations to timber sale contracts has been established.

The principal author of this proposed rulemaking is Ernest Black, Division of Forestry, assisted by the staff of the Office of Legislation and Regulatory Management.

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Under this proposed rulemaking, individuals or firms who receive notice from the Bureau of Land Management of proposed debarment would be permitted to present facts and information pertaining to an allegation of failure to perform under a timber sale contract and/or to mitigation of damages. The rulemaking would not require any specific information or any format for the information to be provided. Therefore, the rulemaking would not impose an information collection requirement as that term is defined in

Office of Management and Budget regulations at 5 CFR 1320.7.

List of Subjects in 43 CFR Part 5440

Forest and forest products, Government contracts, Public lands.

Under the authority of section 5 of the Act of August 28, 1937 (43 U.S.C. 1181e), and the Act of July 31, 1947, as amended (30 U.S.C. 601 et seq.), Subchapter E, Chapter II of Title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 5400—[AMENDED]

1. The authority citation for Part 5400 is revised to read as follows:

Authority: 61 Stat. 681, as amended, 69 Stat. 367, 48 Stat. 1269, sec. 11, 30 Stat. 414, as amended, sec. 5, 50 Stat. 875; 30 U.S.C. 601 et seq., 43 U.S.C. 315, 423, 1181a et seq. unless otherwise noted.

2. Section 5400.0-5 is amended by adding new paragraphs (p), (q), and (r) at the end thereof to read:

§ 5400.0-5 Definitions.

(p) 'Debarment' means action taken by a debarring official under § 5441.1(c) of this title to exclude a purchaser from entering into contracts with the Bureau of Land Management for sale of timber.

(q) 'Debarring Official' is a Bureau of Land Management official who has been delegated authority to make debarment decisions under this part.

(r) 'Purchaser' means any individual or other legal entity that: (1) Submits bids or proposals for or is awarded, or reasonably may be expected to submit bids or proposals for or be awarded, a Bureau of Land Management timber sale contract, or (2) conducts business with the Government as an agent or representative of another purchaser.

PART 5440—[AMENDED]

3. Section 5441.1 is amended by revising paragraph (c) to read:

§ 5441.1 Qualification of bidders.

(c)(1) In accordance with the provisions of this section the debarring official may debar a bidder who has defaulted on a timber purchase contract because of failure to make payment by the expiration date of the contract from bidding on any subsequent timber purchase contracts until the bidder has made satisfactory arrangements with the authorized officer for payment of damages to the United States.

(2) Debarment shall be pursued only if the defaulting purchaser's financial situation demonstrates a lack of present

responsibility to do business as a government contractor.

(3) The authorized officer shall report to the State Director and the debarring official any information relating to the basis for debarment of a timber purchaser, including a complete statement of the facts, appropriate exhibits and a recommendation for action.

(4) When the debarring official gives preliminary approval, debarments shall be initiated by informing purchasers and any specifically named affiliates by certified mail, return receipt requested, as follows:

(i) That debarment is being considered.

(ii) The reasons for the proposed debarment in terms sufficient to put the purchaser on notice of the transaction(s) upon which it is based; and

(iii) The potential effect of the proposed debarment.

(5) The purchaser, within 30 days after receipt of the notice, may submit, in person, in writing, or through a representative, information in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts.

(6) If purchaser requests, the authorized officer shall hold a meeting with the purchaser within 20 calendar days. Any statements, records, or

exhibits submitted by the purchaser at this meeting shall become part of the debarment decision record.

(7) The debarring official shall make a decision on the basis of all the information in the record, including any submission made by the purchaser. The decision shall be made within 30 working days after receipt of any information and arguments submitted by the purchaser, unless the debarring official determines that there is good cause to extend this period.

(8)(i) If the debarring official decides to impose debarment, the purchaser and any affiliates involved shall be given prompt notice by certified mail, return receipt requested, as follows:

(A) The notice of proposed debarment shall be referred to;

(B) The reasons for debarment shall be specified; and

(C) The period of debarment including effective date shall be stated.

(ii) If a debarment is not imposed the debarring official shall promptly notify the purchaser and any affiliates involved of the decision by certified mail return receipt requested.

(d)(1) The debarring official shall compile and maintain a current list of debarred timber purchasers. This list shall be distributed to all State Directors, the General Services Administration, the General Accounting

Office, and other Federal agencies requesting it.

(2) The list of debarred purchasers shall contain the following information:

(i) The names and addresses of all debarred or suspended purchasers.

(ii) The cause of the action.

(iii) Any limitation to or deviations from the normal effect of debarment.

(iv) The effective date of the action.

(v) The name and telephone number of the person in the Bureau of Land Management with information about the debarment.

(3) Purchasers debarred in accordance with this section shall be excluded from receiving Bureau of Land Management timber sale contracts and the Bureau shall not solicit offers from, award contracts to, or consent to subcontracts with these purchasers unless the Director or authorized representative determines in writing that there is a compelling reason for such action.

(4) During the period of debarment, a debarred contractor, upon a showing of good cause, may apply for reinstatement to contract with the Bureau of Land Management.

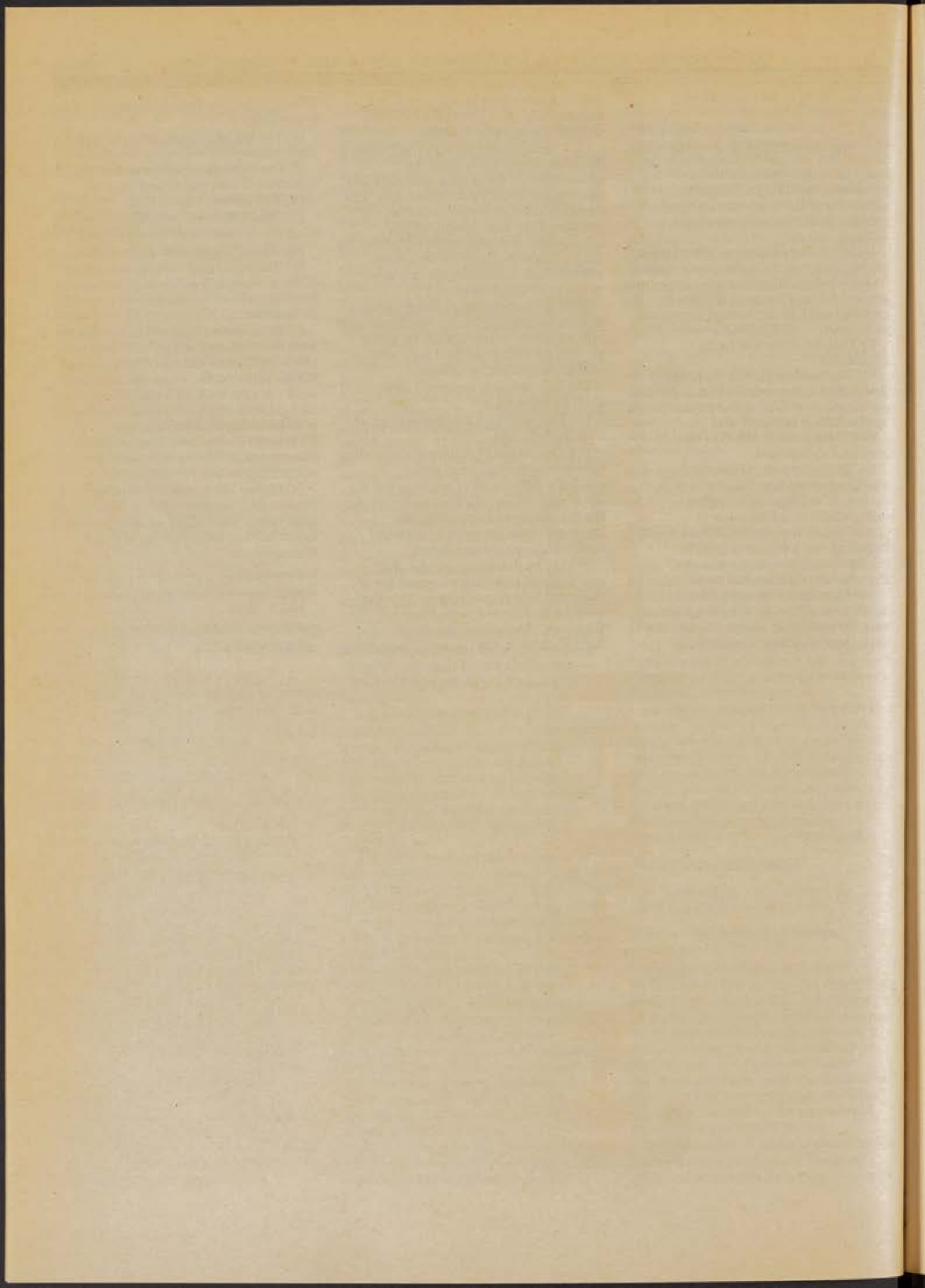
J. Steven Griles,

Deputy Assistant Secretary of the Interior.

May 7, 1985.

[FR Doc. 85-17074 Filed 7-17-85; 8:45 am]

BILLING CODE 4310-84-M



federal register

**Thursday
July 18, 1985**

Part IV

Department of Education

34 CFR Part 304

**Removal of Architectural Barriers to the
Handicapped; Final Rule**

DEPARTMENT OF EDUCATION

34 CFR Part 304

Removal of Architectural Barriers to the Handicapped

AGENCY: Department of Education.

ACTION: Final rule.

SUMMARY: The Secretary issues regulations under section 607 of the Education of the Handicapped Act to govern a State formula grant program for the elimination of architectural barriers to handicapped children and individuals. The Removal of Architectural barriers to the Handicapped program provides grants to State educational agencies (SEAs) to assist them in making subgrants to local educational agencies (LEAs) and intermediate educational units (IEUs) to alter existing buildings and equipment. These final regulations include application requirements, an allocation formula, and funding activities that are allowable under this program.

EFFECTIVE DATE: These regulations will take effect either 45 days after publication in the *Federal Register* or later if Congress takes certain adjournments. If you want to know the effective date of the regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT:

Mr. William D. Tyrrell, Special Education Programs, Department of Education, 400 Maryland Avenue, SW., Switzer Building, Room 3611, Washington, D.C. 20202; Telephone (202) 732-1025.

SUPPLEMENTARY INFORMATION:**A. Overview of the Program**

The Removal of Architectural Barriers to the Handicapped program is authorized by Section 607 of the Education of the Handicapped Act (EHA), 20 U.S.C. 1406, as amended by section 5 of the Education of the Handicapped Act Amendments of 1983, Pub. L. 98-199, December 2, 1983. As amended, section 607 provides that:

(a) The Secretary is authorized to make grants and to enter into cooperative agreements with State educational agencies to assist such agencies in making grants to local educational agencies or intermediate educational units to pay part or all of the cost of altering existing buildings and equipment in accordance with standards promulgated under the Act approved August 12, 1968 (Pub. L. 90-480), relating to architectural barriers.

(b) For the purpose of carrying out the provisions of this section, there are

authorized to be appropriated such sums as may be necessary.

Pub. L. 98-8, commonly referred to as the Emergency Jobs Bill, enacted on March 24, 1983, provides \$40 million to carry out the provisions of section 607. The funds will remain available until expended.

The Architectural Barriers Act of 1968 (ABA), Pub. L. 90-480, 42 U.S.C. 4151-4157, requires various Federal agencies—not including the Department of Education—to prescribe such standards for the design, construction, and alteration of certain buildings as may be necessary to ensure that handicapped children and individuals will have ready access to and use of those buildings. These agencies include the General Services Administration (GSA), the Department of Defense, the Department of Housing and Urban Development, and the United States Postal Service.

Section 607 of the EHA authorizes the alteration of existing buildings and equipment in accordance with standards promulgated under the ABA. The alteration of existing buildings and equipment under this part must be consistent with the standards adopted by the GSA on August 7, 1984 (49 FR 31528) and incorporated by reference at 41 CFR 101-19.603 (49 FR 31625; August 7, 1984). The GSA standards may be modified as appropriate to take into account the age groups of individuals who will benefit under this program.

The final regulations establish a State formula grant program. This is consistent with the revisions to Section 607 of the EHA made by the Education of the Handicapped Act Amendments of 1983. As amended, section 607 authorizes the Secretary to give grants to SEAs for the removal of architectural barriers. SEAs then give subgrants to LEAs and IEUs.

In order to establish administrative procedures for this program that are consistent with procedures used for the Department's other State formula grant programs, 34 CFR 76.102(y) is redesignated as § 76.102(z), and a new provision is added at 34 CFR 76.102(y).

This new provision adds the application submitted by a State under the Removal of Architectural Barriers to the Handicapped program to the EDGAR definition of "State plan." As a result of this amendment, all the administrative procedures set out in the EDGAR which govern State plans apply to the Removal of Architectural Barriers to the Handicapped program.

The authorizing statute for this program does not include a formula for distributing funds. The Secretary, however, amends the definitions of

"direct grant program" and "State formula grant program" at 34 CFR 75.1(b) and 76.1(b), respectively, to include programs which contain a regulatory formula for distributing funds. In addition, conforming amendments are made to 34 CFR 76.260.

B. Overview of Regulatory Provisions**1. Subpart A—General**

Subpart A describes the basic purpose of the Removal of Architectural Barriers to the Handicapped program. This subpart identifies the parties that are eligible to receive grants. Other Federal regulations which apply to this program are also listed. In addition, Subpart A contains definitions of several terms that apply to this program, and commonly used acronyms. The definition for "alteration" in this subpart is the definition used in the "Uniform Federal Accessibility Standards" (49 FR 31528, August 7, 1984) adopted by GSA. The definition of "equipment" under section 602 of the EHA is used for this program.

2. Subpart B—How Does an SEA Apply for a Grant?

Subpart B sets forth the requirements that an SEA must meet in order to receive a grant under this program, including program assurances and application requirements. Assurances included in this subpart incorporate requirements under section 607 of the EHA and Pub. L. 98-8. The use of assurances in the program application relieves the paperwork burden on SEAs since they will not need to submit detailed information to demonstrate how applicable statutory and regulatory requirements will be met.

In its application for program funds, each SEA must assure that the quality of the environment will be assessed according to provisions in the National Environmental Policy Act of 1969 and Executive Order 11514. See 34 CFR 75.601, as incorporated by 34 CFR 76.600(a). In addition, the SEA must provide the Secretary with the information required under 34 CFR 75.602(a) (*Preservation of historic sites*). The Secretary will notify SEAs of the date on which they must submit a summary of this information to the Department.

The SEA must also assure that special consideration will be given to projects in areas experiencing high rates of unemployment. The legislative history of Pub. L. 98-8 includes this provision for making section 607 awards under that appropriation. See Senate Report No. 98-17 (1983), pp. 33-34. Section 101(c) of

Pub. L. 98-8 requires that, to the extent practicable, funds authorized by the Act be used in a manner which maximizes immediate creation of new employment opportunities to individuals who were unemployed at least fifteen of the twenty-six weeks immediately preceding the March 24, 1983, date of its enactment.

In its application, an SEA must describe the general areas to be funded under this program. The SEA need not describe specific projects, nor does it submit blueprints to the Secretary for approval.

3. Subpart C—How Does the Secretary Make a Grant to an SEA?

Section 607 of the EHA does not provide a funding formula for allocating funds among eligible SEAs. A funding formula has been developed from the comments of individuals and organizations who responded to the Secretary's request for comments in the notice of proposed rulemaking. The formula used to allocate funds to the fifty States, the District of Columbia, and Puerto Rico is based on the number of handicapped children served in each participating State, as determined under Part B of the EHA and the State agency program for handicapped children under section 146 of Title I of the Elementary and Secondary Education Act of 1965 (as incorporated in Chapter 1 of the Education Consolidation and Improvement Act of 1981). The Insular Areas, which include American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, are eligible for grants that, together, do not exceed one-half of one percent of the aggregate amounts available to States under this program, and which will be allocated proportionately among the Insular Areas on the basis of the number of children aged three through twenty-one in each Insular Area. However, no Insular Area will receive less than \$15,000, and allocations within these jurisdictions will be ratably reduced, if necessary, to ensure that each Insular Area receives that amount.

Section 304.21 describes how excess funds are reallocated.

4. Subpart D—How Does an Applicant Apply to an SEA for a Subgrant?

Subpart D specifies the information which LEAs and IEUs must include in applications for subgrants. Readers should note that the EDGAR definition of "local educational agency" (34 CFR 77.1(c)) is substantively the same as the definition of that term under section 602(a)(8) of the EHA, and includes any public institution having administrative

control and direction of a public elementary or secondary school. Consequently, State agencies and other public institutions which are legally responsible for the education of handicapped children are eligible for subgrants under this program.

5. Subpart E—How Does an SEA Make a Subgrant?

Subpart E describes the methods an SEA will use to approve or disapprove applications for subgrants from LEAs and IEUs. The regulations permit a State to establish criteria for awarding subgrants. This subpart includes the criteria for determining the amount of subgrants and procedures for reallocating funds.

6. Subpart F—What Conditions Must Be Met by an SEA, LEA, or IEU?

Subpart F describes the provisions with which recipients must comply as a condition of receiving funds under the Removal of Architectural Barriers to the Handicapped program. In the notice of proposed rulemaking, the Secretary encouraged States to use their funds for activities that would—

(1) Make available to handicapped children the variety of educational programs and services available to non-handicapped children in the area served by the LEA or IEU;

(2) Provide non-academic and extracurricular services and activities in a manner that affords handicapped children opportunity for participation in those services and activities; and

(3) Provide accessibility to handicapped individuals involved in the education of handicapped children or eligible to participate in programs administered by LEAs and IEUs.

These activities have been incorporated into § 304.51 as examples of project priorities which an SEA may adopt for approving projects.

7. Subpart G—What Are the Administrative Responsibilities of an SEA?

Subpart G describes the amount of grant funds that the SEA can use for administrative costs, including, among other things, technical assistance to, and monitoring of, participating LEAs and IEUs. Program planning is added to the examples of allowable administrative costs.

Public Participation

Proposed regulations for this program were published on September 19, 1984 (49 FR 36808). A summary of the comments received in response to that notice and the Secretary's responses to

those comments are contained in the appendix to these regulations.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Paperwork Reduction Act of 1980

The information collection requirements contained in these regulations (§ 304.11) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned an OMB control number. The control number appears as a citation at the end of this section.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of this Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based upon the comments on the proposed rules and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 304

Education, Education of handicapped, Grants program—education, Local educational agency, Reporting and recordkeeping requirements, School, School construction, State educational agencies.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the

line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance No. 84.155; Removal of Architectural Barriers to the Handicapped)

Dated: July 11, 1985.

William J. Bennett,
Secretary of Education.

PART 75—[AMENDED]

The Secretary amends Parts 75 and 76 and adds a new Part 304 to Title 34 of the Code of Federal Regulations as follows:

1. Section 75.1 is amended by revising paragraph (b) to read as follows:

§ 75.1 Programs to which Part 75 applies.

(b) If a direct grant program does not have implementing regulations, the Secretary implements the program under the authorizing statute and, to the extent consistent with the authorizing statute, under the General Education Provisions Act and the regulations in this part. For the purposes of this part, the term "direct grant program" includes any grant program of the Department other than a program whose authorizing statute or implementing regulations provide a formula for allocating program funds among eligible States.

2. The table following § 75.1 is amended by removing the following language from the list in Section IV.C.

C. Education of the Handicapped Programs:

"Removal of Architectural Barriers to the Handicapped"; "Section 607 of the Education of the Handicapped Act (20 U.S.C. 1406)"; "None"; "None".

PART 76—[AMENDED]

3. Section 76.1 is amended by revising paragraph (b) to read as follows:

§ 76.1 Programs to which Part 76 applies.

(b) If a State formula grant program does not have implementing regulations, the Secretary implements the program under the authorizing statute and, to the extent consistent with the authorizing statute, under the General Education Provisions Act and the regulations in this part. For the purposes of this part, the term "State formula grant program" means a program whose authorizing statute or implementing regulations provide a formula for allocating program funds among eligible States.

4. The table following § 76.1 is amended by adding the following language to the list in Section B.

Education of the Handicapped Programs:

"Removal of Architectural Barriers to the Handicapped"; "Section 607 of the Education of the Handicapped Act (20 U.S.C. 1406)"; "Part 304"; "84.155".

5. Section 76.102 is amended by redesignating paragraph (y) as paragraph (z) and adding a new paragraph (y) to read as follows:

§ 76.102 Definition of "State plan" for Part 76.

(y) *Removal of Architectural Barriers to the Handicapped.* The application under Section 607 of the Education of the Handicapped Act.

6. The table following § 76.125 is amended by adding the following language to the list under "Education for the Handicapped Programs":

EDUCATION FOR THE HANDICAPPED PROGRAMS

CFDA No. and name of program	Authorizing legislation	Implementing regulations Title 34 CFR (Part)
84.155 Removal of architectural barriers to the handicapped.	Section 607, Education of the Handicapped Act (20 U.S.C. 1406).	304

7. Section 76.260 is revised to read as follows:

§ 76.260 Allotments are made under program statute or regulations.

(a) The Secretary allots program funds to a State in accordance with the authorizing statute or implementing regulations for the program.

(b) Any allotment to other States will be made by the Secretary in accordance with the authorizing statute or implementing regulations for that program. (20 U.S.C. 3474(a)).

8. A new Part 304 is added to Title 34 of the Code of Federal Regulations, as follows:

PART 304—REMOVAL OF ARCHITECTURAL BARRIERS TO THE HANDICAPPED PROGRAM

Subpart A—General

Sec.

- 304.1 The Removal of Architectural Barriers to the Handicapped program.
- 304.2 Applicability of regulations in this part.
- 304.3 Regulations that apply to the Removal of Architectural Barriers to the Handicapped program.
- 304.4 Definitions.
- 304.5 Acronyms that are used.
- 304.6-304.9 [Reserved]

Subpart B—How Does an SEA Apply for A Grant?

- 304.10 Submission of an SEA application.
- 304.11 Content of SEA application.
- 304.12 304.19 [Reserved]

Subpart C—How Does the Secretary Make a Grant to an SEA?

- 304.20 Amount of an SEA's grant.
- 304.21 Reallocation of excess funds.
- 304.22-304.29 [Reserved]

Subpart D—How Does an LEA or IEU Apply to an SEA for a Subgrant?

- 304.30 Submission of an application to the SEA.
- 304.31 LEA and IEU applications.
- 304.32-304.39 [Reserved]

Subpart E—How Does an SEA Make a Subgrant?

- 304.40 Amount of a subgrant to an LEA or IEU.
- 304.41 Reallocation of excess funds.
- 304.42-304.49 [Reserved]

Subpart F—What Conditions Must be Met by an SEA, LEA, or IEU?

- 304.50 Standards for the removal of architectural barriers.
- 304.51 Project priorities.
- 304.52 Project requirements.
- 304.53-304.59 [Reserved]

Subpart G—What Are the Administrative Responsibilities of an SEA?

- 304.60 Amount available for SEA administration.
- 304.61 Administrative responsibilities and allowable costs.
- 304.62-304.69 [Reserved]

Authority: Sec. 607, Education of the Handicapped Act (20 U.S.C. 1406), Pub. L. 94-142, as amended by Pub. L. 98-199; Sec. 5, 97 Stat. 1358 (Dec. 2, 1983); sec. 101(c), Pub. L. 98-8, 97 Stat. 31-32 (1983), unless otherwise noted.

Subpart A—General

§ 304.1 The Removal of Architectural Barriers to the Handicapped program.

The purpose of this part is to provide financial assistance to State educational agencies and, through them, to local educational agencies and intermediate educational units to remove architectural barriers to the handicapped children and other handicapped individuals.

(20 U.S.C. 1406)

§ 304.2 Applicability of regulations in this part.

This part applies to assistance under section 607 of the Education of the Handicapped Act.

(20 U.S.C. 1406)

§ 304.3 Regulations that apply to the Removal of Architectural Barriers to the Handicapped program.

The following regulations apply to assistance under the Removal of Architectural Barriers to the Handicapped program:

- (a) The regulations in this Part 304.
- (b) The Education Department General Administrative Regulations (EDGAR) set out in the following parts of Title 34 of the Code of Federal Regulations—
 - (1) Part 74 (Administration of Grants);
 - (2) Part 76 (State-administered Programs);
 - (3) Part 77 (Definitions that Apply to Department Regulations);
 - (4) Part 78 (Education Appeal Board); and
 - (5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(20 U.S.C. 1406; 20 U.S.C. 3474(a))

§ 304.4 Definitions

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Application
EDGAR
Fiscal year
Grant
Local educational agency
Project
Public
Secretary
State
State educational agency
Subgrant

(20 U.S.C. 3474(a))

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR 300.5(a), 300.7, 300.13, and 300.14:

Handicapped children
Intermediate educational unit
Related services
Special education

(20 U.S.C. 1401(a)(1), (16), (17), (22))

(c) *Other definitions that apply to this part.* In addition to the definitions referred to in paragraphs (a) and (b), the following definitions apply to this part:

(1) "Alteration," as applied to a building or structure, means a change or rearrangement in the structural parts or elements, or in the means of egress, or in moving from one location or position to another. It does not include normal maintenance and repair, reroofing, interior decoration, or changes to mechanical and electrical systems.

(20 U.S.C. 1406, 41 CFR 101-19.603)

(2) "Equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to

house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, telecommunications, sensory, and other technological aids and devices, and books, periodicals, documents, and other related materials.

(20 U.S.C. 1401(a)(5), 1406)

§ 304.5 Acronyms that are used.

The following acronyms are used in this part:

"IEU" stands for intermediate educational unit.

"LEA" stands for local educational agency.

"SEA" stands for State educational agency.

(20 U.S.C. 1406)

§§ 304.6-304.9 [Reserved]

SUBPART B—HOW DOES AN SEA APPLY FOR A GRANT?

§ 304.10 Submission of an SEA application.

In order to receive funds under this part, an SEA must submit an application to the Secretary for review and approval.

(20 U.S.C. 1406)

§ 304.11 Content of SEA application.

(a) Each SEA shall include in its application assurances that—

(1) Funds received under this part will be used to pay the costs of altering existing buildings and equipment in accordance with the standards in § 304.50;

(2) In using funds appropriated under Pub. L. 98-8, special consideration will be given to projects in areas experiencing high rates of unemployment; and

(Pub. L. 98-8, "Education for the Handicapped", 97 Stat. 27 (1983); S. Rep. No. 17, 98th Cong., 1st Sess. 33-34 (1983))

(3) Funds provided under this part that are appropriated under Pub. L. 98-8 will, to the extent practicable, be utilized in manner which maximizes immediate creation of new employment opportunities to individuals who were unemployed at least 15 of the 26 weeks immediately preceding March 24, 1983 (the date of enactment of Pub. L. 98-8).

(Pub. L. 98-8, section 101(c); 97 Stat. 31-32 (1983))

(b) Each SEA application must also include the following information:

(1) A description of the goals and objectives to be supported by the grant

in sufficient detail for the Secretary to determine what will be achieved with the grant.

(2) The estimated number of LEAs and IEUs that will receive subgrants, and a description of the procedures and criteria the SEA will use to award subgrants to LEAs and IEUs, including any priorities established by the SEA under § 304.51(b) (see § 304.40 and Subpart F, "What Conditions Must Be Met by an SEA, LEA, or IEU?").

(20 U.S.C. 1406)

§§ 304.12-304.19 [Reserved]

Subpart C—How Does the Secretary Make a Grant to an SEA?

§ 304.20 Amount of an SEA's grant.

(a) For the purpose of this section—

(1) The term "Insular Area" means American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands; and

(2) The term "handicapped children" means the number of handicapped children determined by the Secretary—

(i) Under section 611 of the Act, to be receiving special education and related services; or

(ii) In average daily attendance at schools for handicapped children or supported by a State agency within the meaning of section 146 of Title I of the Elementary and Secondary Education Act of 1965.

(b) The amount of an SEA's grant under this part for a State other than an Insular Area is determined by—

(1) Dividing the number of handicapped children in that State by the total number of handicapped children in all States submitting approvable applications under this part; and

(2) Multiplying that fraction by the amount of funds available for grants under this part.

(c) The Secretary reserves up to one-half of one percent of the aggregate of the amounts available under this part for grants to Insular Areas. Funds reserved by the Secretary for the Insular Areas are allocated proportionately among them on the basis of the number of children ages three through twenty-one in each Insular Area. However, no Insular Area may receive less than \$15,000, and allocations within these jurisdictions are ratably reduced, if necessary, to ensure that each Insular Area receives at least that amount. Allocations within these jurisdictions are further ratably reduced if the amount reserved is insufficient to provide \$15,000 to each Insular Area.

(20 U.S.C. 1406)

§ 304.21 Reallocation of excess funds.

The Secretary may reallocate funds—or portions of those funds—made available to an SEA under this part if the Secretary determines that the SEA cannot use the funds in a manner consistent with the requirements of applicable statutes or this part. Any reallocation is made on the same basis as grants are determined under § 304.20. (20 U.S.C. 1406)

§§ 304.22-304.29 [Reserved]**Subpart D—How Does an LEA or IEU Apply to an SEA for a Subgrant?****§ 304.30 Submission of an application to the SEA.**

In order to receive funds under this part for any fiscal year, an LEA or IEU shall submit an application for a subgrant to the appropriate SEA. (20 U.S.C. 1406, 3474(a))

§ 304.31 LEA and IEU applications.

An LEA or IEU shall include in its application any information that is required by the SEA in order to fulfill its responsibilities under this part. (20 U.S.C. 1406, 3474(a))

§§ 304.32-304.39 [Reserved]**Subpart E—How Does an SEA Make a Subgrant?****§ 304.40 Amount of a subgrant to an LEA or IEU.**

(a) The SEA shall determine the amount of a subgrant to an LEA or IEU based on—

(1) The size, scope, and quality of the proposed project; and

(2) Any other relevant criteria developed by the SEA and included in the SEA application approved by the Secretary.

(b) The SEA may establish minimum and maximum amounts for subgrants. (20 U.S.C. 1406)

§ 304.41 Reallocation of excess funds.

(a) The SEA may reallocate funds provided for subgrants under this part if an LEA or IEU cannot use the funds in a manner consistent with the requirements of section 607 of the Education of the Handicapped Act and the requirements in this part.

(b) The SEA shall reallocate funds in accordance with the criteria and priorities for approving subgrants in its approved application. (20 U.S.C. 1406)

§§ 304.42-304.49 [Reserved]**Subpart F—What Conditions Must Be Met by an SEA, LEA, or IEU?****§ 304.50 Standards for the removal of architectural barriers.**

The alteration of existing buildings and equipment under this part must be done consistently with standards adopted by the General Services Administration (GSA) under Pub. L. 90-480, the Architectural Barriers Act of 1968. However, the dimensions set out in those standards may be modified as appropriate considering the age groups of the individuals who will use the buildings or equipment.

Note.—On August 7, 1984, the GSA adopted new standards under the Architectural Barriers Act (49 FR 31528) and incorporated them by reference at 41 CFR 101-19.603 (49 FR 31825). (20 U.S.C. 1406)

§ 304.51 Project priorities.

(a) An SEA may establish priorities for the use of funds made available under this part. The SEA may, for example, give special consideration to projects that will meet the special needs of urban or rural locations, or that will facilitate the transition of handicapped children and individuals from school to work.

(b) The Secretary encourages States to use their funds for activities that will—

(1) Make available to handicapped children the variety of educational programs and services available to non-handicapped children in the area served by the LEA or IEU;

(2) Provide non-academic and extracurricular services and activities in a manner that affords handicapped children opportunity for participation in those services and activities; and

(3) Provide accessibility to handicapped individuals involved in the education of handicapped children or eligible to participate in programs administered by LEAs and IEOs.

(20 U.S.C. 1406)

§ 304.52 Project requirements.

To the extent practicable, funds made available under this part that are appropriated under Pub. L. 98-8 must be utilized to create new employment opportunities for the unemployed, as required by Pub. L. 98-8, section 101(c). (Pub. L. 98-8, sec. 101(c); 97 Stat. 31-32 (1983))

§§ 304.53-304.59 [Reserved]**Subpart G—What Are the Administrative Responsibilities of an SEA?****§ 304.60 Amount available for SEA administration.**

An SEA may use up to five percent of its grant for the cost of administering funds provided under this part. (20 U.S.C. 1406)

§ 304.61 Administrative responsibilities and allowable costs.

Administrative costs under this part include—

(a) Planning of programs and projects assisted by funds under this part;

(b) Approval, supervision, monitoring, and evaluation by an SEA of the effectiveness of projects assisted by funds made available under this part; and

(c) Technical assistance that an SEA provides to LEAs and IEOs with respect to the requirements of this part. (20 U.S.C. 1406)

§ 304.62-304.69 [Reserved]**Subpart G—What Are the Administrative Responsibilities of an SEA?****§ 304.60 Amount available for SEA administration.**

An SEA may use up to five percent of its grant for the cost of administering funds provided under this part. (20 U.S.C. 1406)

§ 304.61 Administrative responsibilities and allowable costs.

Administrative costs under this part include—

(a) Planning of program and projects assisted by funds under this part;

(b) Approval, supervision, monitoring, and evaluation by an SEA of the effectiveness of projects assisted by funds made available under this part; and

(c) Technical assistance that an SEA provides to LEAs and IEOs with respect to the requirements of this part. (20 U.S.C. 1406)

§ 304.62-304.69 [Reserved]**Appendix—Summary of Comments and Responses (Note: This Appendix Will Not Be Codified in the Code of Federal Regulations)**

The following is a summary of the comments received on the notice of proposed rulemaking for the Removal of Architectural Barriers to the Handicapped program published on September 19, 1984. Each comment is followed by a response that indicates a change has been made or why not

change is considered necessary. Specific comments are arranged in order of the sections of the final regulations to which they pertain.

Subpart A

Comment. One commenter recommended adding the term "handicapped children" to § 304.1 in place of the term "the handicapped."

Response. A change has been made. The term "handicapped" is modified by adding "children and other handicapped individuals" to § 304.1 to make it consistent with the language in § 304.51.

Comment. Several commenters asked about the availability of funds under this program for removing architectural barriers in postsecondary schools.

Response. No change has been made. Postsecondary schools are not eligible applicants under this program. Section 607 of the Education of the Handicapped Act (EHA) states that grants are made to State educational agencies (SEAs), and SEAs then make subgrants to local educational agencies (LEAs) and intermediate educational units (IEUs).

Comment. One commenter asked the Secretary to add a definition of the word "barriers" to help clarify how funds distributed under this program may be expended.

Response. No change has been made. The terms "alteration" and "equipment" are defined in § 304.4(c). These definitions and the "Uniform Federal Accessibility Standards" adopted by the GSA on August 7, 1984 describe the types of modifications that can be made for accessibility of handicapped persons to facilities and programs. This approach gives States the necessary flexibility to modify facilities to meet the variety of needs of handicapped persons for accessibility in LEAs and IEUs.

Comment. One commenter felt that State program funds should only be used for the removal of "actual architectural barriers," such as the construction of ramps, curb cuts, restroom renovations, the widening of doorways and sidewalks, and the purchase of properly approved equipment such as water fountains.

Response. No change has been made. The adoption of this recommendation would limit potential projects by responding primarily to some needs of handicapped individuals who are non-ambulatory. This program is not limited to providing accessibility only to individuals with those disabilities. The definitions of "alteration" and "equipment" applicable to this program reflect the needs created by the wide range of physical disabilities in handicapped children and other handicapped individuals which schools must accommodate. For example, some of the target population expected to benefit from this program have visual impairments which may require modification in signs and tactile warnings for detecting hazardous obstructions. Hearing impaired individuals may need visual emergency warning systems and may require amplification systems in classrooms and common areas. Children with other health impairments which result in limited strength due to chronic or acute

health problems may need other kinds of adaptations to their educational environment.

Comment. A number of commenters approved of the proposed definition of "alteration" under § 304.4(c)(1). Other commenters requested changes. Several commenters recommended that the word "alteration" be modified to include the extension of mechanical systems needed to make renovated areas operative, and to include roofing when it is needed to complete a renovated area. Others suggested expanding the term "alteration" to include buildings and grounds in order to allow school systems to make changes to playgrounds, walkways, sidewalks, and curbs on school grounds, or to add bus ramps.

Response. A change has been made. The proposed definition of "alteration" has been replaced by the definition of the term which is used in the revised "Uniform Federal Accessibility Standards" (49 FR 31528, August 7, 1984) as adopted by GSA. The Secretary believes that the amended definition addresses the concerns of the commenters since the definition is flexible enough to permit the use of funds under this program for the various projects suggested by the commenters.

Comment. One commenter recommended that the definition of "alteration" in § 304.4(c)(1) be flexible enough to include State and local options for the use of non-standard temporary ramps so that cities can make more of their schools accessible.

Response. No change has been made. This type of ramp does not meet the guidelines in the GSA standards. The recipients of funds under this program must comply with the "Uniform Federal Accessibility Standards."

Comment. Several commenters stated that the definition of "equipment" under § 304.4(c)(2) should not include "printed, published materials, or books, periodicals, documents, and other related materials" since these are generally considered supplies. One commenter wanted to delete all these examples from the definition. Another commenter felt that priorities should be assigned to the examples of equipment.

Response. No change has been made. By statute, the definition of "equipment" under section 602(a) of the EHA, which is repeated in these final regulations, applies to the program under Section 607. The Secretary notes, however, that under this program, priorities for the use of funds may be set at the discretion of SEAs. Under this program, SEAs have the responsibility to approve projects proposed by LEAs and IEUs. At a minimum, SEAs should ensure that proposed equipment purchases are directly related to the needs of handicapped individuals for an accessible school environment.

Comment. Several commenters requested that the definition of "equipment" under § 304.4(c)(2) be modified by adding the terms "communication aids," "computer access devices," and "augmentative communication" to provide program accessibility for mobility impaired, hearing impaired, and nonspeaking students, and those with other physical and sensory impairments.

Response. No change has been made. Communication aids, computer access devices, and augmentative communication

devices are included under the terms "telecommunications, sensory, and other technological aids and devices" in the definition of equipment.

Subpart B

Comment. Several commenters agreed with the provisions in § 304.11(a) (2) and (3) which require SEAs to assure that special consideration will be given to projects in areas experiencing high rates of unemployment. However, one commenter felt that current unemployment data, rather than data from the 1980 census, should be used to determine which areas are experiencing high rates of unemployment. Others felt that the special consideration of high rates of unemployment and the creation of new employment opportunities are unnecessary requirements and have no bearing on the removal of architectural barriers to the handicapped. Another commenter felt that funds should be used to maximize immediate creation of new employment opportunities for unemployed individuals.

Response. No change has been made. The Senate report on the bill that became Pub. L. 98-199 states that special consideration should be given to areas experiencing high rates of unemployment. S. Rep. No. 17, 98th Cong., 1st Sess. 33-34 (1983). In addition, Section 101(c) of Pub. L. 98-8 requires that funds made available under the Act shall, to the extent practicable, be utilized in a manner which maximizes immediate creation of new employment opportunities to individuals who were unemployed at least fifteen of the twenty-six weeks preceding the date of enactment of the Act. These requirements are incorporated in the regulations at § 304.11(a)(2), and at § 302.11(a)(3) and § 304.52, respectively. The Secretary believes that States are afforded sufficient flexibility to comply with these requirements while selecting projects that most effectively meet the program's purpose. The Secretary also notes that nothing in the EHA, Pub. L. 98-8, or in these regulations requires the use of 1980 census data under this program.

Comment. A number of commenters recommended that the unique requirements in the Emergency Jobs Bill regarding the use of funds to ease unemployment should be deleted from § 304.11(a). Others felt that since regulations for this program will outlive the Emergency Jobs Bill, the regulations should not include specific references to the unemployment situation. Another commenter recommended adding an additional requirement to § 304.11(a) stating that funds should be distributed so that the largest possible number of handicapped children benefit.

Response. No change has been made. The assurances required by § 304.11(a) reflect the requirements of the Emergency Jobs Bill and Section 607 of the EHA. Each SEA has the discretion to establish further requirements for distributing funds within the State. See § 304.51 concerning project priorities.

Comment. Several commenters wanted to ensure that funds appropriated under this program are used in addition to, not instead of, funds already being spent or budgeted by

States for the removal of architectural barriers. One commenter recommended that LEAs match or contribute to program funds to increase the impact of the program.

Response. No change has been made. SEAs have the flexibility to develop criteria for approving LEA and IEU applications. There is no statutory requirement for cost-sharing under this program and no prohibition on supplanting of State and local funds.

Comment. Several commenters indicated approval of the requirements for an SEA application at § 304.11(b). One commenter was concerned that the requirement at § 304.11(b)(1) may be impossible for an SEA to fulfill. The commenter believed that since LEAs will apply for funds for specific projects, the SEA may only be able to provide enough detail for the Secretary to gain substantial understanding of whether the purposes of Section 607 of the EHA will be fulfilled.

Response. No change has been made. It is expected that each SEA will be able to provide the Secretary with a general overview of the State's goals and objectives for this program. The SEA will then approve LEA and IEU applications that support these goals and objectives. SEAs will meet the requirement of § 304.11(b)(1) by providing descriptions of priorities and criteria for funding and by indicating examples of the types of projects that can be considered rather than descriptions of specific projects.

Comment. Several commenters felt that consumer groups should be involved in the development of an SEA's criteria for approving LEA and IEU applications. Some of these commenters noted that, under § 304.11(b)(2), these criteria must be described in the State plan submitted to the Secretary for program funds.

Response. No change has been made. In the general State application required under EDGAR, which each State has submitted to the Secretary, SEAs provided an assurance that the State will provide for the participation of relevant committees, interest groups, and experienced professionals in the development of State plans (see 34 CFR 76.101(e)(7)(i)). Since that section in EDGAR applies to this program (see the amendments to 34 CFR 76.1), consumer groups will have the opportunity for participation in the development of the State's application. The public must also have 30 days to comment on the State's application for program funds before it is submitted to the Secretary. (See 34 CFR 76.101(e)(7)(ii).)

Subpart C

Comment. More than two-thirds of the commenters responding to the Secretary's invitation to comment on the proposed alternative funding formulas under § 304.20 recommended the adoption of the first option as the most appropriate distribution scheme for the appropriation under this program. The first formula is based on the number of handicapped children served in each participating State, as determined under Part B of the EHA and the State agency program for handicapped children under section 146 of Title I of the Elementary and Secondary Education Act of 1965 (ESEA). The second option is a formula based on the number of

all school-aged children in each participating State.

Commenters who preferred the second formula felt that this approach would recognize the needs of children with impaired mobility who are not "handicapped" within the meaning of Section 602 of the Act, focus on increasing accessibility to general education facilities, deter some States from inflating their child counts in order to increase their allocations under this program, or provide specific States and LEAs with a greater amount of funds than would a formula based only on the relative numbers of handicapped children.

One commenter indicated that neither of the proposed formulas was adequate to address the needs of the Insular Areas. The commenter suggested that the funds be allocated according to a formula that provides a minimum of \$100,000 to each of the Insular Areas.

A few commenters recommended the inclusion of a formula (based on either the first or second alternative) for making subgrants to LEAs.

Response. A change has been made. The Secretary has determined that allocations to the fifty States, the District of Columbia, and Puerto Rico will be based on the number of handicapped children served in those States and jurisdictions, as reported in their child counts under Part B of the EHA and the State agency programs for handicapped children under Section 146 of Title I of the ESEA.

A funding formula that is similar to the funding formula under the EHA-B (see 34 CFR 300.710) has been adopted for the Insular Areas (American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific). Under this formula (see § 304.20(c)), the Secretary will reserve an amount not to exceed one-half of one percent of the aggregate of the amount available to States under this part. Funds reserved for the Insular Areas will be allocated proportionately among them on the basis of the number of all children aged three through twenty-one in each Insular Area. No Insular Area will receive less than \$15,000, which is the minimum amount that the Secretary believes appropriate to support projects of adequate size, scope, and quality to meet the needs of the small population of handicapped children in those jurisdictions. In order to ensure that each Insular Area receives at least that amount, allocations within these jurisdictions will be ratably reduced if necessary. A formula based on the count of handicapped children in each Insular Area would not be consistent with the EHA-B funding formula for those areas and would impose additional data collection, record-keeping, and reporting requirements since those jurisdictions are not required to submit counts of handicapped children under either the EHA-B or the State agency program under section 146 of Title I.

Under Section 611(e)(2) of the EHA-B, the Insular Areas may receive grants that do not exceed a total amount equal to one percent of the amounts available to all States under that part for any fiscal year. For the purpose of the Removal of Architectural Barriers to the Handicapped program, the Secretary has determined that a maximum of one-half of

one percent of the appropriated funds will apply to the funds reserved for the Insular Areas in order to provide a fair share of the program funds to each eligible State and jurisdiction.

The Secretary agrees with the majority of the commenters that the adoption of the funding formula applicable to the fifty States, Puerto Rico, and the District of Columbia is appropriate for the following reasons. First, this approach is consistent with the funding formula under Part B of the EHA and the purpose of that program, which is to make available (that is, to provide access to) special education and related services for handicapped children. Second, this formula directs funds to jurisdictions in proportion to their established programs for serving handicapped children. Third, the desirable goal of increasing accessibility to general education facilities, including vocational education and other program options, can be addressed as well under this formula as under the alternative approach. Finally, since there is no guarantee of further appropriations under this program, there is no real incentive for States to inflate their child counts in expectation of increased allocations under this program.

The Secretary also has determined that an allocation formula for LEAs and IEUs is not necessary for the purpose of this program. Each SEA can establish goals, objectives, criteria, and priorities for projects that reflect the number and location of physically handicapped children within its jurisdiction who can best benefit from the program funds.

Comment. One commenter indicated that the formula used for allocating funds should be used on a three-year trial basis before a final formula is selected for this program.

Response. No change has been made. The Secretary expects to distribute funds appropriated under this program before the end of fiscal year 1985. No additional funds were appropriated for this program.

Subpart D

Comment. One commenter asked if State-operated or State-supported programs for the education of handicapped children can receive subgrants under this program.

Response. No change has been made. The EDGAR definition of "local educational agency" is used for this program. This definition includes public institutions or agencies having administrative control and direction of a public elementary or secondary school. (See 34 CFR 77.1.) Under this definition, State-operated programs or State-supported programs are eligible subgrantees if they are under the administrative control and direction of a public institution or agency, and if they meet the EDGAR requirements for construction grants under 34 CFR 75.603 and 75.615, and other applicable rules and requirements under these regulations.

Subpart F

Comment. One commenter recommended incorporating into the regulations a requirement that LEAs and IEUs submit, as part of their application to the SEA, a copy of their most recent self-evaluation report and a description of how the proposed

modifications will eliminate previously identified program accessibility barriers.

Response. No change has been made. According to the Department's regulations under Section 504 of the Rehabilitation Act of 1973 at 34 CFR 104.22(e), the recipients of Federal funds, including LEAs and IEOs, were required to develop and implement a transition plan describing how they would achieve program accessibility for handicapped individuals. Funds available under this program may be used to achieve full program accessibility, as specified in the schedule outlined in an LEA's or IEO's transition plan. The SEA has flexibility under this program to determine the types of information LEAs and IEOs must submit with an application for a subgrant.

Comment. A number of commenters felt that § 304.50 should be amended to allow States to use State standards which are equivalent to standards adopted by the GSA for making alterations to existing buildings and equipment. One commenter supported the use of GSA standards with age appropriate dimension modifications.

Response. No change has been made. The "Uniform Federal Accessibility Standards" adopted by GSA on August 7, 1984, are now in effect. As was noted in the preamble to the proposed regulations, the GSA standards may be modified as appropriate for the age groups of individuals to be served under this program.

Comment. Several commenters recommended that the Department send each SEA a copy of the "Uniform Federal Accessibility Standards" adopted by GSA on August 7, 1984.

Response. No change has been made. However, a copy of the GSA standards published in the Federal Register on August 7, 1984 will be included as part of the State application package for this program. Each State eligible for a grant will receive an application package.

Comment. One commenter recommended that the "Uniform Federal Accessibility Standards" adopted by GSA on August 7, 1984, be codified into the regulations for this program. The commenter believed that requirements relating to the preservation of historic sites might not be observed if users of 34 CFR Part 304 were not informed of the criteria in the GSA standards.

Response. No change has been made. The GSA standards are referenced in a note under § 304.50 of these regulations. In addition, the regulations under 34 CFR Part 76, which apply to this program, specify that States and subgrantees using funds for construction must comply with requirements relating to preservation of historic sites (see 34 CFR 76.600).

Comment. Several commenters felt that § 304.50 should be amended to permit the use of the American National Standards Institute (ANSI) accessibility standards.

Response. No change has been made. Section 607 of the EHA requires that alterations of existing buildings and equipment must be made in accordance with standards authorized by the Act approved August 12, 1968 (Pub. L. 90-480), relating to architectural barriers. The "Uniform Federal Accessibility Standards" (49 FR 31523, August 7, 1984) are the standards adopted to implement Pub. L. 90-480. Readers may be interested to note that these new standards clearly identify which provisions differ from the ANSI standards.

Comment. Numerous commenters responded to the Secretary's invitation to comment on the use of program funds for the three types of activities described in the portion of the preamble summarizing the contents of Subpart F in the proposed regulations. The comments fell into several distinct categories—

(1) Recommendations that no changes be made to the provisions relating to project priorities under § 304.51;

(2) Recommendations to incorporate the three proposed activities into the regulations and to make them mandatory;

(3) Recommendations for adding or substituting different activities as priorities instead of the three proposed activities (e.g., giving priority to educational facilities used as polling places); and

(4) Recommendations to target funding to projects enhancing the integration of handicapped and nonhandicapped children.

Response. A change has been made. The activities listed in the portion of the preamble summarizing Subpart F in the proposed regulations have been added to § 304.51 as examples of project priorities. This gives each SEA the discretion to determine which activities and priorities are needed to meet the needs within the State. States are not precluded from adopting different activities and priorities as criteria for approving projects under this program, and the requirements regarding the conditions which SEAs, LEAs, and IEOs must meet in order to receive program funds are kept flexible. States have the discretion to target funds to programs which integrate handicapped and nonhandicapped children. However, the Secretary believes that some funding needs to be available for children who are placed in separate facilities since this is the least restrictive environment for those children. Also, in previous responses in this Appendix, the Secretary has indicated that the definitions of "alteration" and "equipment" are broadly construed to accommodate the wide variety of physical disabilities exhibited by handicapped children and other handicapped individuals.

Comment. One commenter stated that under this program LEAs should be encouraged to develop joint projects with recreation and other public community agencies and local organizations which serve

handicapped children and other handicapped individuals.

Response. No change has been made. These types of cooperative arrangements are not precluded under this program, provided that grantees and subgrantees meet the construction requirements in EDGAR relating to the grantee's title to the construction site, and the responsibility for operation and maintenance of facilities built with program funds (see 34 CFR 75.603 and 75.615, as incorporated by 34 CFR 76.600).

Comment. Some commenters recommended that certain types of projects receive priority consideration (e.g., giving preference to projects for ramps or other alterations to assist nonambulatory individuals).

Response. No change has been made. Each State has the flexibility to develop the criteria for approving LEA and IEO applications based on State-established goals, objectives, criteria, and priorities. States have the discretion to assign relative weights to the types of projects that are consistent with their established requirements.

Subpart G

Comment. Several commenters felt that five percent of its grant allowed for SEA administration of the program under § 304.60 is an appropriate amount. One commenter felt that the Department should recognize that expenditures will be made by SEAs for planning and recommended that program planning be included as an allowable administrative cost.

Response. A change has been made. Program planning has been added to the activities listed under allowable administrative costs at § 304.61. The Secretary believes that pre-application planning by SEAs will ensure effective use of the program funds and that States may need to use some portion of these funds to involve appropriate staff or consultants.

Comment. One commenter asked if the SEA can contract for administrative services.

Response. No change has been made. Under EDGAR, 34 CFR Part 74, Appendix C, Part II, C. 7, the cost of professional services rendered by an individual or organization not part of a grantee's department may be paid with Federal funds if the State is given prior approval by the Department (see 34 CFR 74.102).

Comment. One commenter asked for clarification of the administrative responsibilities that SEAs will assume for this program (see § 304.61).

Response. No change has been made. The administrative responsibilities for State-administered grant programs, including this program, are described in EDGAR at 34 CFR Part 76, Subpart G.

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