November 13, 1979

Dr. Francis J. Hassler
School of ALS
100 Weaver Hall
NCSU Campus

Dear Dr. Hassler:

Attached is our record of the Extension Home Economics discipline grouping. You may wish to set goals based upon the expected vacancies for the next four years. These goals should be arrived at through the formula basis.

In that regard, availability percentages should be derived and entered at the bottom of Table 6A-11 -- line A should be left blank -- B and C should be filled in -- and the profile for Fall 1978 (last line) should be considered in the place of line A.

Please supply us with a copy of your projected goals in this area for the period 1979-80 through 1982-83.

Sincerely,

Lawrence M. Clark
Assistant Provost

LMC:CW
Encs.

cc: Dr. J. E. Legates

TABLE 6A-11

Composition and New Hires of NCSU
Full-Time Tenured/Tenure Track
Faculty by Race and Sex

Ext. Home Economics
Discipline Grouping

EEO-6 Category: Faculty, Tenured/ Tenure-Track	OCR Line #	Grand Total	Race/Ethnic Group						Sex			
			White		Black		Other		Male		Female	
			#	%	#	%	#	%	#	%	#	%
A) 1977-1978 Profile (May 1978)	2, 9											
B) Hiring Goals 1978-79 - 1982-83	66, 73											
C) Goal Profile 1978-79 1982-83 (10-1-83)	2, 9											
PROJECTED D) New Hires 1978-79												
E) Profile 1978-79 (10-1-79)												
F) New Hires 1979-80												
G) Hires 1978-79 - 1979-80												
H) Profile 1979-80 (10-1-80)												
I) New Hires 1980-81												
J) Hires 1978-79 - 1980-81												
K) Profile 1980-81 (10-1-81)												
L) New Hires 1981-82												
M) Hires 1978-79 - 1981-82												
N) Profile 1981-82 (10-1-82)												
O) New Hires 1982-83												
P) Hires 1978-79 - 1982-83												
Q) Profile 1982-83 (10-1-83)												
Profile Fall 1978 (10-1-78)	2,9	10	10	100	0	0	0	0	1	10	9	90

Availability Data:

Blacks_____ Females _____ Other Minorities_____

EXT. HOME ECONOMICS

Professor

M. Donnelly
J. Rozier
C. Womble

Associate Professor

L. Hawkins
T. Hinson
K. Buckley
R. Kinlaw
N. Tope
F. Wagner

Assistant Professor

M. Spruill

NORTH CAROLINA STATE UNIVERSITY | AT RALEIGH

P. O. Box 5067, Raleigh, N. C. 27650

Office of the Provost and Vice-Chancellor

November 12, 1979

MEMORANDUM

TO: Unit Affirmative Action Officers

FROM: Lawrence M. Clark
Assistant Provost

SUBJECT: Summary of Affirmative Action Activities for the Reporting Period July 1, 1979 - October 31, 1979

Would you respond where appropriate to the attached set of questions?

Please forward your report no later than December 14, 1979.

CW
Enc.

FULL-TIME TENURED/TENURE TRACK FACULTY

I. The questions below pertain to full-time, tenured/tenure-track faculty (by Discipline Grouping) for the reporting period July 1, 1979 - October 31, 1979:

1. During this period, how many positions did you fill on a permanent basis?

2. How many candidates were seriously considered for these positions?

3. Of these candidates, how many were females? minorities?

4. How many offers were made to females? to minorities?

5. How many offers were accepted by females? by minorities?

6. What progress did you make towards your Affirmative Action goals?

FULL-TIME, EPA NON-FACULTY

I. The questions below pertain to full-time, EPA non-faculty for the reporting period July 1, 1979-October 31, 1979.

1. During this period, how many positions did you fill on a permanent basis?

2. How many candidates were seriously considered for these positions?

3. Of these candidates, how many were females? minorities?

4. How many offers were made to females? to minorities?

5. How many offers were accepted by females? by minorities?

6. What progress did you make towards your Affirmative Action goals?

II. Summarize the consultation you had with Search Committees, Department Heads, Division Heads and/or Search Committee members during the period July 1, 1979 - October 31, 1979 (with reference to the recruitment and/or employment of EPA personnel).

FULL-TIME TENURED/TENURE TRACK FACULTY

I. The questions below pertain to full-time, tenured/tenure-track faculty (by Discipline Grouping) for the reporting period July 1, 1979 - October 31, 1979:

1. During this period, how many positions did you fill on a permanent basis?

2. How many candidates were seriously considered for these positions?

3. Of these candidates, how many were females? minorities?

4. How many offers were made to females? to minorities?

5. How many offers were accepted by females? by minorities?

6. What progress did you make towards your Affirmative Action goals?

FULL-TIME, EPA NON-FACULTY

I. The questions below pertain to full-time, EPA non-faculty for the reporting period July 1, 1979-October 31, 1979.

1. During this period, how many positions did you fill on a permanent basis?

2. How many candidates were seriously considered for these positions?

3. Of these candidates, how many were females? minorities?

4. How many offers were made to females? to minorities?

5. How many offers were accepted by females? by minorities?

6. What progress did you make towards your Affirmative Action goals?

II. Summarize the consultation you had with Search Committees, Department Heads, Division Heads and/or Search Committee members during the period July 1, 1979 - October 31, 1979 (with reference to the recruitment and/or employment of EPA personnel).

TABLE 6A

Composition and New Hires of NCSU
Full-Time Tenured/Tenure Track
Faculty by Race and Sex

EEO-6 Category: Faculty, Tenured/ Tenure-Track	OCR Line #	Grand Total	Race/Ethnic Group						Sex			
			White		Black		Other		Male		Female	
			#	%	#	%	#	%	#	%	#	%
A) 1977-1978 Profile (May 1978)	2, 9											
B) Hiring Goals 1978-79 - 1982-83	66, 73											
C) Goal Profile 1978-79 1982-83 (10-1-83)	2, 9											
PROJECTED D) New Hires 1978-79												
E) Profile 1978-79 (10-1-79)												
F) New Hires 1979-80												
G) Hires 1978-79 - 1979-80												
H) Profile 1979-80 (10-1-80)												
I) New Hires 1980-81												
J) Hires 1978-79 - 1980-81												
K) Profile 1980-81 (10-1-81)												
L) New Hires 1981-82												
M) Hires 1978-79 - 1981-82												
N) Profile 1981-82 (10-1-82)												
O) New Hires 1982-83												
P) Hires 1978-79 - 1982-83												
Q) Profile 1982-83 (10-1-83)												
Profile Fall 1978 (10-1-78)												

EPA NON-FACULTY

Present Complement and Projections

Schools/Units	Time Period	RACE/ETHNIC GROUPS				SEX		
		White	Black	Other	Total	Males	Females	Total
Agriculture and Life Sciences	Oct 1, '83	171	10	20	201	138	63	201
	Present	133	7	15	155	110	45	155
Design	Oct 1, '83	2	0	0	2	2	0	2
	Present	2	0	0	2	2	0	2
Education	Oct 1, '83	4	1	0	5	2	3	5
	Present	4	1	0	5	2	3	5
Engineering	Oct 1, '83	37	0	3	40	39	1	40
	Present	37	0	3	40	39	1	40
Forest Resources	Oct 1, '83	22	0	1	23	20	3	23
	Present	20	0	1	21	19	2	21
Humanities and Social Sciences	Oct 1, '83	2	0	0	2	2	0	2
	Present	2	0	0	2	2	0	2
Physical and Math. Sciences	Oct 1, '83	20	0	0	20	13	7	20
	Present	18	0	2	20	13	7	20
Textiles	Oct 1, '83	12	1	0	13	13	0	13
	Present	8	0	1	9	8	1	9
Library	Oct 1, '83	23	3	1	27	9	18	27
	Present	23	3	1	27	9	18	27
Student Affairs	Oct 1, '83	58	11	1	70	39	31	70
	Present	58	11	1	70	43	27	70
University Extension	Oct 1, '83	29	4	0	33	25	8	33
	Present	28	3	0	31	23	8	31
Special Units	Oct 1, '83	43	3	0	46	39	7	46
	Present	43	3	0	46	40	6	46
TOTAL	Oct 1, '83	423	33	26	482	341	141	482
	Present	376	28	24	428	310	118	428

EPA NON-FACULTY

Present Complement and Projections

Schools/Units	Time Period	RACE/ETHNIC GROUPS				SEX		
		White	Black	Other	Total	Males	Females	Total
Agriculture and Life Sciences	Oct 1, '83	171	10	20	201	138	63	201
	Present	133	7	15	155	110	45	155
Design	Oct 1, '83	2	0	0	2	2	0	2
	Present	2	0	0	2	2	0	2
Education	Oct 1, '83	4	1	0	5	2	3	5
	Present	4	1	0	5	2	3	5
Engineering	Oct 1, '83	37	0	3	40	39	1	40
	Present	37	0	3	40	39	1	40
Forest Resources	Oct 1, '83	22	0	1	23	20	3	23
	Present	20	0	1	21	19	2	21
Humanities and Social Sciences	Oct 1, '83	2	0	0	2	2	0	2
	Present	2	0	0	2	2	0	2
Physical and Math. Sciences	Oct 1, '83	20	0	0	20	13	7	20
	Present	18	0	2	20	13	7	20
Textiles	Oct 1, '83	12	1	0	13	13	0	13
	Present	8	0	1	9	8	1	9
Library	Oct 1, '83	23	3	1	27	9	18	27
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EPA NON-FACULTY

Present Complement and Projections

Schools/Units	Time Period	RACE/ETHNIC GROUPS				SEX		
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	Present	2	0	0	2	2	0	2
Education	Oct 1, '83	4	1	0	5	2	3	5
	Present	4	1	0	5	2	3	5
Engineering	Oct 1, '83	37	0	3	40	39	1	40
	Present	37	0	3	40	39	1	40
Forest Resources	Oct 1, '83	22	0	1	23	20	3	23
	Present	20	0	1	21	19	2	21
Humanities and Social Sciences	Oct 1, '83	2	0	0	2	2	0	2
	Present	2	0	0	2	2	0	2
Physical and Math. Sciences	Oct 1, '83	20	0	0	20	13	7	20
	Present	18	0	2	20	13	7	20
Textiles	Oct 1, '83	12	1	0	13	13	0	13
	Present	8	0	1	9	8	1	9
Library	Oct 1, '83	23	3	1	27	9	18	27
	Present	23	3	1	27	9	18	27
Student Affairs	Oct 1, '83	58	11	1	70	39	31	70
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University Extension	Oct 1, '83	29	4	0	33	25	8	33
	Present	28	3	0	31	23	8	31
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TOTAL	Oct 1, '83	423	33	26	482	341	141	482
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EPA NON-FACULTY

Present Complement and Projections

Schools/Units	Time Period	RACE/ETHNIC GROUPS				SEX		
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	Present	2	0	0	2	2	0	2
Education	Oct 1, '83	4	1	0	5	2	3	5
	Present	4	1	0	5	2	3	5
Engineering	Oct 1, '83	37	0	3	40	39	1	40
	Present	37	0	3	40	39	1	40
Forest Resources	Oct 1, '83	22	0	1	23	20	3	23
	Present	20	0	1	21	19	2	21
Humanities and Social Sciences	Oct 1, '83	2	0	0	2	2	0	2
	Present	2	0	0	2	2	0	2
Physical and Math. Sciences	Oct 1, '83	20	0	0	20	13	7	20
	Present	18	0	2	20	13	7	20
Textiles	Oct 1, '83	12	1	0	13	13	0	13
	Present	8	0	1	9	8	1	9
Library	Oct 1, '83	23	3	1	27	9	18	27
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University Extension	Oct 1, '83	29	4	0	33	25	8	33
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	Present	43	3	0	46	40	6	46
TOTAL	Oct 1, '83	423	33	26	482	341	141	482
	Present	376	28	24	428	310	118	428

THE UNIVERSITY OF NORTH CAROLINA
General Administration
P. O. BOX 2688
CHAPEL HILL 27514

JEFFREY H. ORLEANS
Special Assistant to the President

TELEPHONE (919) 933-6081

November 19, 1979

MEMORANDUM

TO: The 504 Officers

FROM: Jeffrey H. Orleans JHO

The voluminous document enclosed with this memo is the "final rule" of the Department of Transportation defining the 504 obligations of transit systems that receive federal assistance. Most constituent institutions are located in cities that have such systems; the DOT rules provide us an opportunity to participate in those systems' 504 planning and to assure that the benefits of their increased accessibility flow to our students, employees, and visitors.

I suggest you look particularly at: the transition plan requirements of sections 27.65 and 27.103 (discussed at pp. 31448 and 31464, text at pp. 31473 and 31480); the construction and alteration requirements in section 27.67 (pp. 31449 and 31473); requirements for bus systems and paratransit systems in sections 27.85 and 27.91 (pp. 31455, 31460 and 31478, 31479); the program policies and practices that transit systems must consider and change pursuant to section 27.95 (pp. 31461 and 31479); requirements for interim accessibility in section 27.97 (pp. 31462 and 31479); and the provisions for community participation in section 27.107 (pp. 31465 and 31481).

The regulation provides a number of ways for handicapped members of our institutional communities to be involved in the transit systems' 504 activities, as well as for us to make known our institutional needs and try to secure a response to them. Please be in touch if you have any questions, or have specific experiences in working with your local systems that would be of benefit to other institutions.

Attachment

cc: Paul Marion
Don Stedman
Edd Hauser

DEPARTMENT OF TRANSPORTATION
Office of the Secretary

49 CFR Part 27

Nondiscrimination on the Basis of Handicap in Federally-Assisted Programs and Activities Receiving or Benefitting From Federal Financial Assistance

AGENCY: Department of Transportation.

ACTION: Final Rule.

SUMMARY: This final rule implements section 504 of the Rehabilitation Act of 1973, which 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 rule requires recipients of financial assistance from the Department of Transportation to make their existing and future facilities and programs accessible to handicapped persons so that they can effectively use these facilities and programs. In addition, the rule prohibits employment discrimination by recipients against handicapped persons and requires recipients to make reasonable accommodations to the handicaps of otherwise qualified employees so that they may enjoy full access to employment opportunities in programs funded by the Department of Transportation.

EFFECTIVE DATE: July 2, 1979.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590. 202/426–4723.

SUPPLEMENTAL INFORMATION:

Synopsis

Introduction

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of handicap in any program receiving Federal assistance. Pursuant to Executive Order 11914, the Department of Health, Education and Welfare (HEW) issued Guidelines concerning the responsibilities of each Federal agency under section 504. In providing generally that the transportation systems which receive financial assistance from the Department of Transportation (DOT, the Department) must be accessible to the handicapped, this rule constitutes DOT's action in accordance with those Guidelines.

HEW Guidelines

In general terms, the Guidelines require that each program or activity receiving Federal financial assistance shall be operated so that, when viewed in its entirety, the program or activity is readily accessible to handicapped persons. If structural changes are necessary to achieve this accessibility, the Guidelines require such changes to be made as soon as practicable, but in no event later than three years after the effective date of this rule. If extraordinarily expensive structural changes to, or replacement of, existing facilities would be necessary to achieve program accessibility, and if other accessible modes of transportation are available, the Guidelines permit DOT to establish, by regulation, a deadline for compliance that is more than three years after the effective date of this rule.

The Guidelines also provide that new facilities and, to the maximum extent feasible, alterations to existing facilities, must be readily accessible to handicapped persons.

Finally, the Guidelines provide generally that no handicapped person shall be subjected to discrimination in employment under any program or activity receiving Federal financial assistance.

Highlights of the Rule

This rule is the result of extensive efforts on the part of DOT to design a workable program to meet the transportation needs of the handicapped population as well as the general public. It has been refined since the Notice of Proposed Rulemaking (NPRM) stage on the basis of public comment both from public hearings in five cities and in over 650 written submissions. The commenters included representatives of interested and affected organizations, including groups representing handicapped persons and state and local authorities.

The rule is designed to provide accessibility to all modes of public transportation, as required by the HEW Guidelines, as expeditiously as is feasible. The Department is convinced that the rule responds to the needs of handicapped persons in compliance with the law and in a prudent and financially responsible manner. The rule builds upon earlier Departmental efforts to enhance transportation accessibility.

Recipients are encouraged to undertake additional steps on their own initiative to provide accessibility to handicapped persons, and to seek financial assistance from DOT to carry out those steps in accordance with existing DOT funding procedures. Nothing in these regulations is included to prevent recipients from taking these actions.

Briefly, the new rule requires that:

1. *Public transit buses,* the most widely used means of public transit, for which solicitations are issued after the effective date of the rule, must be wheelchair accessible. While the rule contemplates that Transbus will ultimately become the core of the public transit bus system, it does require that new buses before Transbus be accessible. Within ten years, half the buses used in peak hour service must be wheelchair accessible, and these buses must be utilized before inaccessible buses during off-peak hours so as to maximize the number of accessible buses in service.

2. Under existing regulations all new *rapid rail* facilities must be accessible. This rule would also require that all existing rapid rail systems be made accessible to the handicapped over time, subject only to a limited waiver provision. The rule adopts a system-wide approach to rapid rail and mandates that key stations be made accessible in 30 years if station accessibility involves extraordinary costs, with less costly changes in three years. The rule establishes specific criteria for key stations but would permit a locality to make additional stations accessible. Accessible and inaccessible rail stations would have to be linked by accessible connector service. We expect that at least one-third of the key stations should be made accessible within 12 years, at which time an evaluation of the progress toward accessibility would be made. While it is impossible to calculate with certainty the precise number of stations that would meet the key station criteria for any given system, DOT estimates that as many as 60 percent of the stations in some cities would have to be made accessible, with a national average of about 40 percent.

The key stations include stations where passenger boardings exceed average station boardings by 15 percent, transfer points on a rail line or between rail lines, end stations (unless near another accessible station), stations serving major activity centers (e.g., employment centers, hospitals), stations that are special trip generators for sizeable numbers of handicapped persons, and stations that are major interchange points with other modes of transportation.

A provision of the rule permits the local transit authority, through its Metropolitan Planning Organization

(MPO), to apply for a waiver from the accessibility requirements if it has an alternative proposal which was developed through local consultation, specifically including close coordination with handicapped persons and their organizations. A public hearing is also required. If the alternative will provide service to handicapped persons that is substantially as good as or better than the service under the requirement sought to be waived, a waiver may be granted. The principal rapid rail recipient in the five major cities with older, inaccessible systems must spend, or ensure that other Urban Mass Transportation Administration (UMTA) recipients spend, at least the equivalent of five percent of its area's funds under section 5 of the Urban Mass Transportation Act on the alternative service, if that recipient is granted a waiver.

The rule generally requires that rapid rail vehicles purchased after the effective date of the regulation must be accessible. Further, on a system basis, one vehicle per train must be accessible within three years of the effective date of the rule, whether by purchase of new cars or retrofitting of older cars. However, up to five years would be allowed if extraordinary costs are involved.

3. *Commuter rail* systems must be made accessible, also subject to a limited waiver provision. On the basis of key station criteria similar to those applied to rapid rail, all key stations must be made accessible within three years, with an extension to 30 years if station accessibility involves extraordinary costs.

On a system basis, one vehicle per train must be accessible no later than three years after the effective date of the rule, whether by replacement or retrofit, but up to 10 years is allowed if extraordinary costs are involved.

New vehicles for which solicitations are issued on or after January 1, 1983, must be accessible.

4. *Light rail* (trolley and streetcar) systems must be made accessible, also subject to a limited waiver provision. Using similar key station criteria as apply to rapid rail, all key stations must be made accessible within 20 years, with less costly changes to be made in three years.

On a system basis, within three years after the effective date (up to 20 years may be allowed if extraordinary costs are involved), half the vehicles used in peak hour service must be wheelchair accessible, and these vehicles must be utilized before inaccessible vehicles during off-peak hours so as to maximize the number of accessible vehicles in service. New vehicles for which solicitations are issued on or after January 1, 1983, must be accessible.

5. For Federally-assisted urban mass transportation systems that will not be accessible within three years after the effective date of this rule, *interim accessible transportation* must be provided, until those systems are accessible. Subject to specified spending criteria, this interim service must be available in the normal service area during normal service hours, and must be developed in cooperation with an advisory group of local representatives of handicapped persons. The service, to the extent feasible, must meet a number of criteria as to convenience and comparability to regular mainline service. The recipient must use its best efforts to coordinate special services in the locality to meet the service standards. The recipient must spend an amount equal to two percent of its UMTA section 5 funds on the provision of interim service unless the advisory group agrees with the recipient that lower expenditures will provide an adequate level of service.

6. New *airport terminals* must be accessible with respect to general passenger flow, ticketing areas, baggage check-in and retrieval, aircraft boarding and existing, telephones, vehicular loading and unloading, parking, waiting areas, and public services. Existing air carrier airport terminals must be made accessible within three years. Airports must provide assistance incident to boarding to handicapped passengers, and for air carrier airports, lifts, ramps or other suitable devices not normally used for freight must be provided to enable wheelchair users to board or exit from aircraft.

7. New rest area facilities along federally assisted *highways* must be made accessible. Existing rest area facilities on Interstate highways must be made accessible within three years of the effective date. Other rest areas will be made accessible when the rest area or the adjacent highway is altered or improved with the participation of Federal funds. All crosswalks constructed with Federal financial assistance must have curb cuts or ramps. With certain exceptions, new pedestrian overpasses, underpasses, and ramps constructed with Federal financial assistance can have no gradient in excess of 10 percent.

8. Every new *railroad* station constructed with Federal financial assistance must be accessible with respect to general passenger flow, ticketing areas, baggage check-in and retrieval, boarding platforms, telephones, vehicular loading and unloading, parking, waiting areas and public services. Existing stations must be made accessible within five years for certain stations, and within 10 years for all stations. Railroad car accessibility requirements have been coordinated with the Interstate Commerce Commission (ICC), and require one car per train to be accessible within five years.

9. The rule prohibits *employment discrimination* against the handicapped in relation to programs that receive or benefit from Federal financial assistance from DOT. In addition, Federal fund recipients are required by the rule to make reasonable accommodations to known handicaps of otherwise qualified applicants for employment unless the accommodation would impose an undue hardship upon the operation of the program.

The Department of Transportation considers this rule to be a "significant" regulatory action under the Department's policies and procedures for "Improving Government Regulations," published in the Federal Register on February 26, 1979 (44 FR 11034). The rule is deemed significant because there is widespread public interest in its provisions, because the rule will affect most transportation providers and users in the country, and because the rule has a significant cost impact.

Because of its economic impact, the Department has prepared a Regulatory Analysis of this regulation. The Regulatory Analysis examines the various alternatives that the Department considered in preparing this rule, considers the cost and program implications of the alternatives, and explains the Department's reasons for making the choices resulting in the final rule. A copy of the Regulatory Analysis has been placed in the docket for this rulemaking and is available for public inspection.

Background

This rule is based upon the Rehabilitation Act of 1973, Pub. L. 93–112, 29 U.S.C. 790 et seq.* Section 504 of

*On November 6, 1978, section 504 was amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 to add coverage of any program or activity conducted by an Executive agency or the U.S. Postal Service. Since the amendment occurred after publication of the proposed rule, the specific provisions of that proposed rule were not drafted to apply to the Department's internal programs and activities. While the final rule expresses the Department's general policy concerning those programs and activities, the rule does not strictly apply to them. The Department intends to review its programs and activities to determine what actions to take to implement the amendment to section 504.

this statute states 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 * * *." It is the primary legal basis for the efforts by the Department to ensure that handicapped persons are able to use transportation facilities and programs which receive financial assistance from the Department.

Section 504 provides little guidance concerning the means by which the Department should carry out its mandate. The section's legislative history is very sparse, and does not indicate, even in general terms, what the substance of the requirements of the affected agencies should be. Consequently, following the enactment of section 504, Executive Order 11914 was issued (41 FR 17871, April 28, 1976) to direct the Secretary of Health, Education, and Welfare (HEW) to establish standards, guidelines, and procedures for Federal agency implementation of section 504. The Order also directed other Federal agencies, including DOT, to issue rules consistent with the HEW standards and procedures. HEW issued its standards, guidelines and procedures (the HEW Guidelines) on January 13, 1978 (43 FR 2132). On June 8, 1978, DOT issued an NPRM to implement section 504 (43 FR 25016). The NPRM invited public comment and provided for a 90-day comment period, which was later extended 44 more days until October 20, 1978. In addition to this opportunity for submission of written comments, the Department, realizing the public interest and the complexity of the issues in this rulemaking, held public hearings in New York, Chicago, Denver, San Francisco/Oakland, and Washington, D.C.

About 650 persons and groups provided written comments to the docket, and 220 persons and groups made presentations at the public hearings. The commenters included representatives of groups of handicapped persons, transit operators, local and state governments, and many private individuals. The diversity and depth of these comments have emphasized the importance of this rulemaking for the future of this country's transportation systems and have been invaluable to the Department in making its decisions on the issues.

Analyzing the public response and revising the proposed regulation in light of the many comments has been a time-consuming task which has delayed the issuance of the rule. However, we are convinced that this time has been well spent, and that the changes made to the rule as the result of the Department's analysis of the comments have significantly improved its provisions.

Section-by-Section Analysis

The following portion of the Supplemental Information discusses each section of the final rule. This analysis does not attempt to discuss completely each detailed provision of the regulation. Rather, the discussion pays particular attention to the differences between final rule and the NPRM and provides the Department's response to comments relevant to each section. When cost figures are used, they are expressed in 1978 dollars.

Subpart A—General

Section 27.1 Purpose. This section, about which no comments were received, is substantively unchanged from the NPRM. It simply restates the language of section 504.

Section 27.3 Applicability. This section, also unchanged from the NPRM, states that the rule applies to each recipient of DOT financial assistance and to programs and activities receiving assistance. The only comment on this section suggested that the reference to coverage of programs and activities was redundant. We do not believe that the reference is superfluous, and in any event no problems are created by its inclusion.

While DOT does not intend for this rule to apply retroactively, requirements which become effective on the effective date of this regulation, e.g., certain new contruction or the issuance of solicitations for certain new vehicles, will be subject to this rule even if the construction or vehicles were part of a project or contract approved before the effective date of this part.

Section 27.5 Definitions. Several definitions were changed from the NPRM. The first change results from a provision of the Comprehensive Rehabilitation Services Amendments of 1978, which deleted from the statutory definition of a handicapped person, as it applies to employment, alcoholics or drug abusers whose use of drugs or alcohol prevents them from performing the duties of a given job or makes them a threat to property or other persons. Consequently, the definition of "qualified handicapped person" has been changed to exclude, for purposes of employment, persons subject to the 1978 amendment. This means that employers are not required to hire drug or alcohol abusers whose condition makes them unable to do the job or makes them a threat to persons or property.

One comment pointed out that the definition of "passenger" included rail passengers but not passengers in other types of conveyances. This definition has been changed so that it includes passengers in modes other than rail.

In addition, several new terms have been added to the definitions section. In § 27.67(d) of the NPRM, the word "accessible" referred to the "ANSI standards" for purposes of the regulation. The ANSI standards which are published by ANSI, Inc., are detailed specifications for buildings and other fixed facilities designed to ensure that handicapped persons can enter and use the buildings. Because the ANSI standards do not apply to vehicles and other conveyances, a definition of "accessible" has been added to § 27.5. It provides that the term means conformity with the ANSI standards for new fixed facilities. For existing facilities, and for vehicles and other facilities to which the ANSI standards do not apply, the definition requires facilities to be able to be entered and used by handicapped persons. The ANSI standards will be a general guide to accessibility for existing facilities.

Definitions of light rail, commuter rail, and rapid rail systems have been added to the section, as have definitions of fixed route bus systems and public paratransit systems, air carrier airports, mass or public transportation, transportation improvement programs, and urbanized areas.

Because we decided (see discussion of Subpart F) to replace the designation of the Director of the Office of Environment and Safety with the general term "responsible Departmental official," the definition of "Director" has been deleted.

Numerous comments were received with respect to the definitions. One frequently made was that the definition of "handicapped person" did not spell out specifically what a "transportation handicapped person" was. Some of these comments suggested that separate definitions for "handicapped person" be developed for the transportation services and employment contexts. The Department of Transportation must generally use "handicapped person" (paragraph (1) of the definition in the rule), as that term is defined in section 504 and the HEW Guidelines. With respect to the transportation accessibility portions of the rule, the Department's interest centers on persons whose handicap results in a limited ability to use public means of transportation.

In particular, with respect to the mass transportation sections, the transportation handicapped are defined by statute. Section 12(c)(4) of the Urban Mass Transportation Act of 1964, as amended (UMT Act), defines "handicapped person" as "any individual who by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, including any person who is wheelchair bound or has semiambulatory capabilities, is unable without special facilities or special planning or design to utilize public transportation facilities and services effectively." UMTA's regulations contain virtually an identical definition of those who are covered (49 CFR § 609.3). The Department will construe the provisions consistently with the definition in the UMT Act to the extent feasible. However, the entire definition, which derives from the HEW Guidelines, is needed to specify the class of persons whom the rule protects from employment discrimination. Under these circumstances, a change to the definition is not necessary.

Several persons were also concerned with the inclusion of drug and alcohol abusers in this definition. Including these persons is consistent with HEW policy, and most apprehensions about their inclusion are probably addressed by the 1978 amendments discussed above. This rule does not require that alcohol and drug abusers be included among the persons eligible for elderly and handicapped half-fare programs required by DOT as a condition of receiving assistance under section 5(m) of the Urban Mass Transportation Act of 1964, as amended.

Various comments suggested that the regulation should contain additional terms, such as "violation," "comparable service," and so forth. In our view, the definitions section should be limited to basic terms and should not attempt to deal with what, in effect, are substantive questions better left to other parts of a regulation. The existing list of definitions is sufficiently comprehensive to provide the basic "building blocks" for an understanding of the substance of the regulation.

§ 27.7 Discrimination Prohibited. This section sets forth in general terms the requirements imposed upon recipients to avoid discrimination against handicapped persons. The Department's interpretation of § 27.7 on matters of accessibility to programs is set forth in Subparts C, D and E. It is those subpart that, in general, should by looked to for guidance on this subject. Compliance with those subparts satisfies the requirements of § 27.7 on matters of program accessibility.

This section has been changed from the NPRM in two respects in response to comments. Minor editorial changes were made to subparagraph (b)(1)(vi).

In response to several comments, a new paragraph [c] has been added, incorporating the language of § 85.51(e) of the HEW Guidelines. This language requires recipients to take appropriate steps to ensure that communications with their employees, applicants, and beneficiaries are available to persons with impaired vision or hearing. These steps are likely to be relatively low capital expenditure items which can significantly facilitate the use of public transportation services by hearing and vision impaired persons and improve the employment situation of these persons.

It should be pointed out that the anti-discrimination provisions of this section and § 27.63 not only apply to discrimination between handicapped and non-handicapped persons, but also to discrimination between different classes of handicapped persons. For example, the regulation frequently requires accessibility for wheelchair users. When this standard is used, we intend that the vehicle or facility also be made accessible to persons whose handicap is not severe enough to require the use of a wheelchair (e.g., persons who use crutches or walkers).

One comment questioned the basic statement of § 27.7(a) that no handicapped person, "solely" by reason of handicap, shall be discriminated against under a DOT-assisted program. The commenter pointed out that the parallel provision of the HEW Guidelines does not use the word, "solely," and suggested that the word could lead to abuse. The word "solely" is taken directly from the language of section 504 and is equally appropriate here. Its purpose is to suggest generally that the primary focus of this rule is only upon one type of discrimination; its purpose is clearly not to limit the applicability of this rule to situations in which the discrimination focused upon is the only type of discrimination present.

A few commenters expressed concern that subparagraph (b)(3) was not sufficiently detailed or explicit to prevent denials of regular, mainline service to handicapped persons in situations where special service for handicapped persons also exists. In our view, the existing language is sufficient, and does not need to be expanded.

§ 27.9 Assurances Required. The few comments that were received on this section, and the Department's own reconsideration of the language of the NPRM, centered on paragraphs (b) and (c), which deal with the "flow-through" of the rule's requirements to transferees of property obtained by a recipient with Federal financial assistance. Paragraph (a) has not been changed.

The purpose of paragraphs (b) and (c) is to ensure that, when a recipient sells or transfers property obtained with Federal financial assistance to another party for the same or similar purposes, the transferee will be bound by the obligations of these rules. If such provisions did not exist, it would be theoretically possible for the purpose of the regulations to be thwarted by a property transaction. The NPRM language implementing this purpose was drawn largely from the HEW implementing rules, which in turn were drawn from agency regulations implementing Title VI of the Civil Rights Act of 1964. To clarify these paragraphs, we decided to rewrite them. With one exception noted below, the rewrite is not intended to affect the substance of NPRM language.

Each of the four subparagraphs of the new paragraph (b) covers one of the types or uses of DOT financial assistance. Respectively, they are the direct transfer of real property from DOT to a recipient (e.g., the Federal Aviation Administration (FAA) gives a small rural airport it owns in Alaska to the state government), the use of Federal aid to help a recipient purchase real property (e.g., the acquisition of highway right-of-way by a state highway department), the use of Federal aid to buy personal property (e.g., the purchase of buses by a local transit authority), and use of Federal aid not involving the acquisition of property by a recipient (e.g., operating assistance to a rapid rail system). Where real property is involved, subsequent transferees of the property, as well as the recipient, are bound by the requirements of the regulations as long as the property is used for the purpose of the original Federal assistance or a similar purpose. In the case of personal property, the recipient is bound by the requirements of the regulations as long as it owns or keeps possession of the property. In addition, we have added language to the provision binding the recipient to follow these regulations as long as a transferee of personal property uses the property for a purpose directly connected with the recipient's operations. For example, if a small airport buys a snowplow with Federal aid, it continues to be bound by these regulations if it sells the snowplow to the county government and the county government, using the same

snowplow, assumes the responsibility for clearing the airport's runways of snow. Finally, assistance not used to obtain property obligates the recipient under these regulations only for so long as the assistance continues to be provided.

As one commenter noted, the NPRM did not include a provision—common to the HEW Guidelines and most Federal agency Title VI regulations—allowing the Department to reclaim the property in the event a recipient or transferee violates its obligations in cases where DOT directly conveys property to a recipient. DOT gives land away only in rare instances, to meet a particular government purpose. Therefore, we decided to delete this provision. Other means better suited to enforce the obligations of recipients and transferees, such as conciliation, administrative fund cutoffs, and other means authorized by law (e.g., court action), are, of course, still available.

§ 27.11 Remedial Action, Voluntary Action, and Compliance Planning. Subparagraph (c)(2)(3) has been changed to require recipients only to "begin to modify," rather than to "modify" as provided by the NPRM, policies or practices that do not meet the requirements of the rule within the first 180 days of its effective date. This change is intended to make clear that the modifications do not have to be completed within 180 days. The modifications must be completed within one year of the effective date of the rule, however, and this provision has been amended to so state. In addition, in response to a comment, subparagraph (c)(2)(iv) has been clarified by substituting the word "previous" for the word "modified." This change should remove any doubt that the paragraph calls on recipients to eliminate the effects of policies or practices that existed before modifications made to comply with these regulations. Also subparagraph (c)(3) now requires the submission of certain records to the head of the operating administrations only upon request. This change is intended to lessen the administrative requirements of the rule, by eliminating the NPRM's requirement that copies of these records be sent automatically to the Department.

This section drew relatively few comments. One commenter wanted to change the language of subparagraphs (a) (2) and (3) from the responsible Departmental official "may" to the responsible Departmental official "shall" take certain action. Believing that the responsible Departmental official should have discretion in his or her actions under this section, we decided against this change. Other commenters wanted the regulations explicitly to require recipients to consult with handicapped persons, organizations, advisory committees, or the Architectural and Transportation Barriers Compliance Board. The section (subparagraph (c)(2)) already requires consultation with handicapped persons and organizations representing the handicapped. An additional organizational layer such as an advisory committee, while a step that some recipients may want to take, is not something the Department believes is appropriate to demand of all recipients. Finally, the Architectural and Transportation Barriers Compliance Board is a separate Federal organization with a different statutory mandate from that of the Department of Transportation. It would unnecessarily complicate the planning processes of recipients if the Board has to be routinely consulted in every case. However, the Department does intend to consult with the Board, which is an important resource in this area, in matters affecting its accessibility policies.

§ 27.13 Designation of Responsible Employee and Adoption of Grievance Procedure. This section is essentially unchanged from the NPRM. There were two comments of note. One asked that DOT require smaller recipients to have a grievance procedure, or at least retain the option to require such a procedure for them. The Department does not think that this step would be a good idea. Recipients with 14 or fewer employees are small enough to be able to handle most grievances informally. In keeping with the Federal policy of avoiding over-regulation, we think it appropriate to avoid imposing this kind of administrative burden on small recipients. The second comment expressed concern that this section could be interpreted to require persons to exhaust the administrative grievance procedures established by recipients before making a complaint to the Department under § 27.123. The Department encourages the settlement of local grievances by agreement of the local parties involved, and believes that recipients' grievance procedures will be a useful tool in reaching such settlements. However, persons may make written complaints to the Department under these regulations at any time.

§ 27.15 Notice. This section is also unchanged from the NPRM. Few commenters discussed this section. One asked for broader distribution of notices under the section. The Department believes the NPRM requirements are sufficient. Another asked for a specific requirement of distribution to vision and hearing impaired people and others whose handicaps may interfere with communications. This concern is handled by the addition of the new § 27.7(c) to the rule, as well as by the language of section 27.15(e) itself.

§ 27.17 Effect of State or Local Law. This section states that the obligation to comply with this part is not obviated or affected by State or local law. It is unchanged from paragraph (a) of the NPRM. The intent of this provision is to indicate that State or local laws which limit or prohibit the eligibility of certain handicapped persons for jobs or services are not an excuse for noncompliance with this rule. Paragraph (b) of the NPRM version of this section said that the obligation to comply with the rule is not affected by the fact that employment opportunities for handicapped persons in some occupations may be relatively limited. Subpart B of the regulation adequately handles the problem of the employment of handicapped employees. Therefore, paragraph (b) appears to be unnecessary and has been deleted.

Subpart B—Employment Practices

Many commenters on the employment provisions of the NPRM had an initial concern about its scope, arguing that the definition of a handicapped person in § 27.5 of Subpart A, as it applied to employment, was overbroad. The list of impairments conferring protected status on individuals under the regulation should be pared down, in these commenters' view, particularly to exclude drug addicts and alcoholics from the definition. The definition of handicapped persons used in the NPRM is taken directly from the HEW guidelines (45 CFR 85.31). As noted in the discussion of § 27.5, this definition has been modified to take into account the 1978 amendments to the Rehabilitation Act of 1973, which should eliminate the concern of commenters about the employment of drug abusers or alcoholics. Drug abusers or alcoholics whose conditon make them a threat to persons or property or renders them unable to perform their job are not required to be hired. Otherwise, the definition remains as stated in the NPRM.

We emphasize that the prohibition of discrimination against handicapped persons does not mean that people who cannot perform the duties of a job or whose employment is inconsistent with valid safety requirements must be

employed. The Department does want to ensure that organizations to which it provides financial assistance look only at the job-related qualifications of applicants and employees, and do not deny job opportunities to persons because of assumptions or stereotypes about their physical or mental condition or because they are unwilling to make reasonable accommodations to meet the needs of handicapped workers.

Section 27.31 Discrimination Prohibited. The first sentence of subparagraph (a)(1) has been changed by adding the words "for employment or an employee" after the word "applicant." This is a clarification to ensure that readers of the rule understand that present employees, as well as applicants, are covered by the prohibition of discrimination, and to distinguish these applicants from applicants for financial assistance.

A number of commenters suggested that this section include language clearly stating that recipients were not precluded from voluntarily taking "affirmative action" to overcome impediments to the employment of handicapped persons. It is not a purpose of the rule to prohibit such voluntary efforts. Therefore, subparagraph (a)(2) has been amended to state that the regulations do not prohibit the consideration of handicap as a factor in employment decisons when the purpose and effect of this consideration are to overcome or remove impediments, or the present effects of past impediments, to the employment of handicapped people.

One commenter interpreted subparagraph (a)(3) to mean that recipients' contractors (e.g., suppliers, construction contractors) were covered by the employment requirements of the regulation. The intent of this provision is simply to require that when a recipient enters into a contractual or other arrangement with organizations (e.g. labor unions or employment agencies) which directly affects the selection of employees or their working conditions, employees are still not to be subjected to discrimination. The Department does not intend through this provision to impose employment practice requirements on contractors performing work or providing supplies to recipients.

One focus of considerable commenter concern was paragraph (c), which provides that a recipient's obligation to comply with the rule with respect to employment is not affected by any inconsistent term of a collective bargaining agreement. This section is straightforward. The rule establishes certain duties (e.g., to make reasonable accomodations for handicapped workers) which recipients must perform as conditions to receiving Federal financial assistance. Any inconsistency between this requirement and a term of a labor-management agreement does not excuse the recipient from complying with the regulations. To say otherwise would permit recipients and their unions, by collective bargaining agreement, to abridge the rights guaranteed handicapped persons by statute and regulation. While we recognize that this provision may require some adjustments to be made in some labor-management relationships, we believe that the provision is necessary to ensure that the rights of the handicapped under law and regulation are fully respected in all situations.

§ 27.33 Reasonable Accommodation. Many commenters representing the handicapped, and transit authorities, asked for the inclusion of more detail and examples in this section. The comments, collectively, evinced uncertainty about what the Department wanted "reasonable accommodation" to be and sought more definitive guidance. We understand these concerns. There are, however, literally multitudes of different recipients, job requirements and kinds of handicaps. Deciding what may constitute a "reasonable accommodation" in a given situation requires consideration of a great many variables involving the recipient, the job and the handicapped employee. Lists of examples of "reasonable accommodations" cannot do justice to this multiplicity of situations, and are likely to be misperceived as representing the sum total of what the regulation requires. Therefore, we decided to leave the final rule language as it was in the NPRM. After experience with the problems of specific recipients and handicapped employees, the Department or the operating administrations may be able to draft advisory guidance containing the kind of detail which the commenters believe to be desirable.

Considerable concern was expressed about subparagraph (b)(3), which provides that reasonable accommodation includes assigning to an alternative job with comparable pay an employee who becomes handicapped after being hired and is unable to perform his or her original duties. Some commenters said that for safety, personnel, or labor-management reasons, this requirement was impractical. The key point is that placement in an alternative position is required only with respect to "qualified" employees; the rule does not require alternative placement of a handicapped person in a job the employee cannot perform capably or safely. The same point applies to the question of "comparable pay." An employee who is unqualified for a job at the same pay level as his pre-handicap job could be given a new job, for which he or she was qualified, that paid less than the old job. The rule does not require compensation of employees at a level above that which is appropriate for the work they are qualified to do and are doing. Nor does it require the creation of a position which is surplus to the personnel requirements of a recipient, although job restructuring may be a valid response to the needs of handicapped employees in appropriate cases.

Some groups representing handicapped persons, on the other hand, requested that alternative placement be in a position equal to or better than the employee's former job in terms of pay and responsibility. The Department does not think this would be a reasonable requirement.

Some commenters, principally groups representing the handicapped persons, objected to paragraph (c), which sets out factors for the Department to use in determining whether "undue hardship" prevents some kind of reasonable accommodation. These comments viewed this paragraph as a "loophole" in the regulation. The point of this paragraph, which DOT believes to be very important, is that this regulation should not ask a recipient to do what is impossible or unreasonable in a given situation. The regulations forbid discrimination against handicapped employees and require employers to "go the extra mile" of reasonable accommodation to make employment opportunities available. However, the regulation should not forbid employers from taking safety, costs, or operational needs into account in this process.

§ 27.35 Employment criteria. This section, which deals with employment tests and other criteria for employment, contained an editorial error which several commenters mentioned. Paragraph (b) has been corrected to read that tests when administered to an applicant for employment "or an employee" with impaired sensory, manual or speaking skills must nontheless "accurately measure what they purport to measure," i.e., job related skills. Otherwise, this section has not been changed.

Several commenters, principally transit operators, felt that this section put them unfairly into a "guilty until proved innocent" position with respect to employment testing. The criticism is not valid. Under the section, a test or

employment criterion is not questioned so long as it does not adversely affect handicapped persons with respect to employment opportunities. If the test or criterion does have an adverse impact on handicapped persons then the employer must show that the test or criterion is job-related, i.e., actually measures or constitutes a qualification to perform the duties of the position. This process is modeled after the method by which the administrative agencies and courts determine whether an employment test or criterion which disproportionately excludes members of a minority group violates Title VII of the Civil Rights Act of 1964. In each case, the adverse impact on members of a protected group raises a rebuttable presumption of discriminatory treatment. The employer can rebut the presumption by showing that consideration of valid job-related job qualifications is responsible for the disparity in the effect of the test or criterion on the protected group and other people. Turning the presumption around—presuming that a test or criterion which has an adverse effect or excludes handicapped persons is job-related until the handicapped person or the Department shows to the contrary—would be inconsistent with this well-established and important part of equal employment opportunity law.

Two commenters raised a related issue, that of test "validation," asserting that there are no employment tests validated for use by handicapped persons. The concept of validation concerns the relationship of testing materials and job qualifications. A valid test measures an applicant's ability to perform certain duties. (See Uniform Guidelines on Employee Selection Procedures, 43 FR 38290, August 25, 1978). If a recipient's tests are valid and measure only job-related factors, and do not add measures of extraneous factors, then they are valid for blacks, whites, men, women, fully mobile people and persons confined to wheelchairs.

§ 27.37 Preemployment Inquiries. This section, which is fashioned after the HEW Guidelines (45 CFR 85.55), has not been changed from the NPRM. Several objections to this section were based on fears that it could impede medical examinations and inquiries that are necessary for safety and, in some cases required by other DOT regulations (e.g., 49 CFR Part 391, subpart E, relating to physical examinations for drivers employed by motor carriers). In the case of motor carrier driver positions, all applicants are required by DOT regulations to take physical examinations, and are not considered qualified to drive unless they meet the minimum, criteria specified by Part 391. If a person is not physically qualified to drive, then a recipient's failure to hire the person does not violate this part.

To clarify this point, language was added to the last sentence of paragraph (a) specifying that preemployment medical examinations required by Federal law or regulation are permitted. Other pre-hire inquiries into an applicant's ability to perform job-related functions are also permitted. In any event, an offer of employment may be conditioned on the results of a medical examination conducted before the hired employee reports for work, so long as all similarly situated employees must take such an examination.

Subpart C—Program Accessibility—General

§ 27.61 Applicability. Language has been added to this section to specify that the provisions of Subpart C should, where possible, be interpreted to be consistent with the provisions of Subparts D and E, which concern the specific modes of transportation receiving financial assistance from the Department. In cases of apparent conflict, however, the section provides that the standards of Subpart D and E shall prevail. This section is otherwise unchanged from the NPRM.

§ 27.63 Discrimination Prohibited. This section has not been changed from the NPRM.

§ 27.65 Existing Facilities. This section requires recipient's programs and activities to be accessible, discusses methods for achieving accessibility, sets a three-year deadline for making structural changes needed to ensure accessibility (different deadlines may be provided by subparts D or E), instructs recipients to prepare "transition plans" with respect to making structural changes, and requires recipients to make provision for informing handicapped persons of the availability of accessible facilities and services.

Several changes were made to paragraph (d) of this section. Along with a copy of their transition plans, recipients must now make available to the public a list of the persons and organizations consulted as part of the required public participation process. This addition is intended to permit the public to scrutinize the effectiveness of the recipient's efforts to involve the public, and handicapped persons and their organizations in particular, in the planning process. A new subparagraph (d)(1) adds to the required contents of the transition plan a listing of each facility required to be modified under the regulation. Facilities must be listed even if the recipient contemplates requesting from the Department a waiver of the requirement to modify them. Other parts of the subparagraph require planning for the modification of all listed facilities in the transition plan. These requirements are intended to ensure that recipients plan to modify all facilities required to be modified by the regulations. This planning requirement ceases to apply only if a waiver is granted for a given facility.

Some commenters suggested the discussion of "program accessibility" in paragraph (a) should specify that so long as mobility through use of some of the components of an area's overall transportation system is available to handicapped persons, program accessibility has been achieved. The HEW guidelines require, and DOT's policy supports, making all modes of transportation accessible for all persons regardless of handicap. Consequently, we did not adopt their suggestion. Another comment, asking that existing facilities not be required to be made accessible, was not adopted for the same reason.

Some comments suggested that the regulation in all instances specify that facilities and programs be "usable by" as well as "accessible to" the handicapped. This change is unnecessary. The rule's definition of "accessible" refers to the ANSI standards for new facilities and requires vehicles and existing facilities to be able to be entered and used by handicapped people. The definition of "accessible" includes the concept of "usability" and the absence of the word "usable" in some places in the regulation does not mean that a facility that handicapped persons can enter but cannot use will be in compliance.

Two commenters suggested that more examples be added to the methods of achieving program accessibility in paragraph (b). We think the existing language, particularly given the proviso calling for use of "any other methods" in appropriate situations, is broad enough. Given the applicability of the ANSI standards, specific inclusion of examples of nonstructural changes in this paragraph is unnecessary.

One commenter added that, consistent with § 84.22(d) of the HEW Guidelines, the regulations should require recipients to make nonstructural changes within 60 days. The § 84.22(d) which the commenter cites is part of HEW's own rules implementing section 504 for HEW-funded programs and is not binding on DOT. Nothing in the HEW Guidelines sets a separate

deadline for nonstructural changes. In addition, as a practical matter, we do not believe that such a short deadline is advisable.

Several comments contended that paragraph (d) should require transition plans to be submitted within 6 months, as HEW requires, rather than a year. The 6-month HEW requirement mentioned is part of HEW's Part 84 implementation rules for its own program. Its Part 85 guidelines for other agencies leave the schedule for transition plans to the discretion of each agency. In our view, a year is a reasonable time to allow most DOT recipients to plan for the often difficult and costly changes that will have to be made; for some recipients an 18-month period is allowed (see § 27.103, transition plans for rapid rail systems).

§ 27.87 New Facilities and Alterations. This section establishes general requirements for accessibility to facilities which are constructed or altered after the regulations go into effect, and applies the ANSI standards to this construction or alteration.

The Department has changed this section from the NPRM in a number of respects. As a clarification, paragraph (a) now states that facilities must be designed, constructed and "operated" in a manner so that they are accessible. This paragraph now also specifies that the accessibility requirement applies to vehicles ordered or leased after the effective date of the regulation, unless otherwise provided in Subpart D or E.

Some clarifications in paragraph (a) suggested by commenters—for example, that all components of a transportation program, train cars as well as station platform, be made accessible—are not needed because other portions of the regulation state the requirement. Objections to the proviso in paragraph (b) that alterations of facilities should be made accessible "to the maximum extent feasible" appear to be based on the assumption that this phrase dilutes the rule's mandate for accessibility. This assumption is incorrect. DOT is committed to the goal of accessibility, but wants to make clear that it is not demanding that recipients make changes which are simply not feasible (e.g., changes for which technology is not available or changes which would cause a dangerous weakening of a structure).

Paragraph (b) requires certain buildings to conform to the requirement of physical accessibility in paragraph (d). If an alteration is made to a portion of a building the accessibility of which could be improved by the manner in which the alteration is carried out, the alteration must be made in that manner. Thus, if a doorway is being altered, the doorway must be made wide enough to accommodate wheelchairs. On the other hand, if the alteration involves ceilings, the provisions of this section do not apply because this alteration cannot be done in a way that affects the accessibility of the building.

Paragraph (b) is based on the belief that alterations present opportunities to design and construct the altered portion or item in an accessible fashion. It should be noted that paragraph (b) applies only to the altered portion or item of a fixed facility. Thus, a stair renovation to meet the ANSI standard does not impose a requirement for elevator installation since an elevator is not within the scope of the stair alteration project. Paragraph (b) does not create the obligation to install an elevator in an existing fixed facility which has no elevator. The basic requirement in paragraph (b) is simply to take the opportunities afforded by the alteration and, to the maximum extent feasible, use the alteration to make the facility accessible. Thus, normal maintenance may take place in practically all cases without generating an accessibility requirement.

In sharp contrast to paragraph (b), the sections on specific mass transportation systems (§§ 27.85–27.93) effectively do require the installation of elevators or other level change mechanisms in fixed facilities which have no elevators. However, because of the transition plan requirement applicable to those sections, all of a system's fixed facilities (for example, all stations in a rapid rail system) are examined at once and a rational phasing can occur.

A new paragraph (c), covering renovations of existing vehicles, has been added. This paragraph was § 27.97(b) of the NPRM, and was relocated from Subpart E to this section because it applies to modes other than those covered by Subpart E.

This paragraph provides that renovating efforts which prolong equipment useful life must include retrofit accessibility efforts. This paragraph recognizes that existing buses, rail cars, and other rolling stock are likely candidates for renovation and upgrading, and that such fleet maintenance investments might preclude the timely replacement of inaccessible equipment by accessible new equipment. Retrofit accessibility is not required for routine maintenance activities or for limited modifications to vehicles that are unrelated to the transportation of passengers (e.g. replacement of roofs, addition of new wheels).

Three commenters noted that some state standards (e.g., the Massachusetts Architectural Barriers regulations) may be more stringent than the ANSI standards applied by subparagraph (c). In order to comply with the rule, recipients must ensure that their facilities meet this regulation's accessibility requirements. Nothing in this regulation, however, would relieve recipients of their obligations to comply with state or local regulations which may be more stringent than the ANSI standards.

The statement "When used in this regulation, 'accessible' refers to these standards" in paragraph (d) has been deleted. Since this sentence states a definition of a term applicable throughout the regulation, it has been replaced by a substantially identical definition of "accessible" in § 27.5 in Subpart A.

The Department believes that it is probable that when the updated and revised ANSI standards are promulgated, the Department will use them as a reference to replace the current ANSI standards in this regulation. However, the Department decided to delete the statement that the new ANSI standards will be adopted from paragraph (d), because a statement of probable future action by the Department is not appropriate in the text of a rule. Also, the statement of the address from which copies of the ANSI standards are obtainable has been deleted from this paragraph; the information may be found in a footnote to the definition of "accessible" in § 27.5.

One commenter expressed concern that the portion of paragraph (d) which permitted departures from particular requirements of the ANSI standards, when equivalent access to the facility involved is provided by alternate means, might encourage recipients arbitrarily to ignore the ANSI standards. Given the wide variety of facilities and modification problems recipients will have to deal with under this regulation, we believe that it is reasonable to permit some flexibility in the choice of means to achieve accessibility. The language of paragraph (d) permits deviation from the ANSI standards only when it is "clearly evident" that equivalent access will be provided. This strong requirement, which will be backed by the Department's enforcement process, should be a sufficient safeguard against arbitrary decisions to deviate from the ANSI standards in situations in which those standards apply.

The Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 et seq.), directs the General Services Administration (GSA) to prescribe accessibility standards for the design, construction, and alteration of "buildings," a term defined in the statute. GSA has promulgated a regulation (41 CFR Subpart 101–19.6) to carry out its responsibility under the statute. New fixed facilities (e.g. transit stations) and alterations to existing fixed facilities which are funded by a grant or a loan from this Department are generally covered by that regulation.

The Department's section 504 regulation does not supersede GSA's regulation. However, § 27.67 of the section 504 regulation expresses the basic requirement of GSA's regulation, and if a recipient complies with § 27.67, it generally will have satisfied the requirements of the GSA regulation. The Department intends to administer the two regulations as consistently as possible, for we believe that the two are basically consistent.

Subpart D—Program Accessibility Requirements in Specific Operating Administration Programs: Airports, Railroads, and Highways

This subpart applies section 504 to the transportation facilities and programs receiving financial assistance from the Federal Aviation Administration (FAA), Federal Railroad Administration (FRA) and Federal Highway Administration (FHWA). In the near future, the Department will issue a notice of proposed rulemaking concerning the application of section 504 to programs receiving financial assistance from the National Highway Traffic Safety Administration. Urban mass transit programs are addressed by Subpart E.

Section 27.71 Federal Aviation Administration—Airports. The Department has made a number of substantive and editorial changes in this section. The most significant concerns the use of the term "air carrier airports," which is defined in §27.5 to mean airports served by certificated air carriers, except those airports which are served solely by air carriers using aircraft with a passenger capacity of less than 56 persons or cargo service using solely aircraft with a payload capacity of less than 18,000 pounds. Any airport that receives Federal funds for terminal facilities is deemed to be an air carrier airport.

The portion of this section that requires boarding devices (such as lifts or ramps) that are not ordinarily used for other purposes (such as freight loading) to be reserved for the boarding of handicapped passengers now applies only to air carrier airports. All airports receiving Federal funds must provide boarding assistance to handicapped passengers; airports that are not air carrier airports may do so with lifts, ramps and other devices that are used for other purposes, however.

These requirements replace provisions of the NPRM that limited any requirement for boarding assistance to airports enplaning more than 10,000 passengers a year. In response to comments from handicapped persons and their groups, the Department decided to require assistance incident to boarding at all airports. However, the Department also felt that at very small airports—those outside the "air carrier airport" category—it was reasonable to avoid requiring the purchase of equipment reserved for the use of handicapped persons. In the context of these very small airports, such a requirement would not be cost-effective. Therefore, subparagraphs (a)(2)(v) and (b)(2)(iv) and (v) have been amended to delete the 10,000 enplanement threshold and to insert the new requirements.

Paragraph (a) now provides that terminal facilities constructed "by or for the use of" a recipient of Federal airport aid funds must meet the enumerated accessibility standards. In the NPRM, this provision applied accessibility requirements to terminals constructed "with" Federal funds. The language of the final rule is broader. The Department believes that all terminals constructed by or for airports that receive Federal funds (e.g. for runway improvements), not only terminals actually constructed with Federal funds, should be accessible. Similar changes have also been made for other modes (e.g. intercity rail passenger service).

In paragraph (a)(2)(i), the final regulation adds the word "entrance" to ensure that handicapped persons can readily enter, as well as move around, airport terminals.

In addition to this substantive change, certain editorial changes were made throughout this section. The words "airport terminal" or "terminal" were used to replace the use of the word "station", which we felt to be confusing as applied to airports. The term "wheelchair-confined" was changed to "wheelchair users". This responded to comments that suggested that the term "wheelchair-confined" had unnecessarily negative connotations.

Three of the specific substantive requirements of the section have been changed from the NPRM. Subparagraph (a)(2)(vii), concerning the provision of teletypewriter (TTY) service, has been rewritten. It now provides that each airport shall make available TTY service sufficient to ensure that hearing-impaired persons using TTY equipment are able to communicate readily with airline ticket agents and other personnel. The rewritten provision makes clear that it is the airport which is charged with ensuring that TTY equipment is available. If air carriers have TTY machines which are used, or shared, so as to permit TTY users to communicate readily with ticket agents and other personnel of all carriers, further action by the airport operator may be unnecessary. Where there is not now sufficient TTY capacity, the airport operator is responsible for providing this capacity, either by providing its own equipment or persuading its air carriers to do so. The FAA estimates that in order to provide the capacity required by the rule, 75 large and medium-sized airports will require an average of 4 TTYs; the 94 small airports an average of two; and the 451 smallest airports only one TTY each.

A few comments favored the provision of interpreters at airports instead of the provision of TTY equipment. The use of interpreters would not serve the principal purpose of the TTY provision, which is to provide hearing-impaired people with a substitute for the telephone in order to make reservations and ask for information. A few commenters also wanted greater detail in the provision for passenger assistance, such as requirement for special attendants to help handicapped people with baggage. In our view, the NPRM language is sufficiently explicit. Some commenters also wanted to add detail to the parking facilities provision of the section, such as a requirement of discounted fees for spaces reserved for handicapped persons. Such a requirement, in our view, is outside the scope of this rulemaking aimed at equalizing accessibility.

In response to a comment from a group representing handicapped persons, the last sentence of subparagraph (a)(2)(xi) has been rewritten to say that terminals shall have printed information in a tactile form. Airports may substitute a toll-free information telephone service for this tactile information service. Terminals must also provide information orally, in order to provide information to blind persons. Finally, the NPRM provided that guide dogs must be permitted on all certificated aircraft as well as in terminals. The requirement has been deleted with respect to aircraft for the reason that, as a requirement pertaining

to the accessibility of aircraft interiors, it was more appropriately dealt with by forthcoming rules of the Civil Aeronautics Board.

Many comments from handicapped individuals or groups representing them asked that the rule specifically require airlines to carry handicapped travelers, modify aircraft cabins for greater accessibility, and improve services to handicapped persons. The NPRM contained, and the final rule retains, requirements relating to boarding devices, ticket counters, baggage check-in and retrieval, and teletypewriters, all of which are owned and operated by the airlines at most airports. Following publication of the NPRM, representatives of the DOT, FAA, HEW, and the Civil Aeronautics Board (CAB) met to discuss the respective legal authority and responsibilities for improving the accessibility of air travel to handicapped persons. Following this meeting, the CAB determined that it had statutory authority to issue regulations governing air transportation of handicapped persons, both under section 504 of the Rehabilitation Act and under sections 404 and 411 of the Federal Aviation Act.

Recently, the CAB advised the Department that a rulemaking project was underway to implement these sections. Action by the CAB which would ensure the uniform provision of services and equipment by the airlines, needed to accomplish accessibility to air travel for handicapped persons, could obviate the need for airport operators to provide the same services directly or indirectly, through their leasing arrangements with the airlines.

Accordingly, as CAB rules become final, the Department will review the requirements presently contained, in § 27.71 to determine whether these provisions are duplicative or unnecessary, and if appropriate, will amend the rule to modify or remove such requirements.

Two commenters objected because the NPRM did not change 14 CFR 121.586 and 135.81. These regulations implement section 1111 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1511). Section 1111 provides that subject to FAA regulations, air carriers may refuse transportation to passengers when, in a carrier's opinion, transporting the passenger would or might be inimical to the safety of flight. The CFR sections cited limit the discretion of carriers under this statute and provide that special safety briefings be given to persons who require assistance in entering or leaving aircraft. Section 504 of the Rehabilitation Act does not purport to repeal or modify section 1111, which is exclusively a safety statute.

Comments were received on a number of other specific portions of the terminal standards. Most comments on the waiting area/public space security provision supported the NPRM language, and the language has not been changed. A comment pointed out that the provision on curb cuts erroneously referred to 8.33 "degrees" rather than an incline of 8.33 "percent." The reference has been corrected. Most commenters favored the provision requiring guide dogs to be permitted to accompany their owners in terminals. One commenter thought that the provision might violate state and local health codes. Guide dogs are exempted from virtually all state and local laws or regulations banning animals from public places on health or safety grounds. This provision has not been changed.

Some commenters wanted volume controls attached to all telephones. The provision of the NPRM, which requires at least one volume controlled telephone in all public telephone centers (i.e., groups or clusters of phones) in terminals, should be sufficient to meet the needs of hearing-impaired persons. We have not adopted comments that volume controlled phones should be installed in special locations. Besides being contrary to the goal of integrated service for handicapped persons, carrying out this suggestion would cause the specially equipped phones to be available in fewer locations in the airport and therefore less convenient for hearing-impaired people. One comment suggested that the volume controlled phones be available to wheel chair users. Subparagraph (a)(2)(xii) has been amended to specify that telephones are among the public services that must be made accessible according to the ANSI standards.

The Department expects airports to ensure that these requirements for wheelchair-accessible phones and phones usable by hearing-impaired persons provide service for all handicapped people. Consequently, the wheel-chair-accessible phones should have the hearing assistance features, to serve wheelchair users who have hearing impairments.

Some comments asked whether the provisions of the rule apply to concessionaires and other tenants at airports. The requirements of the rule apply to those parts of airport facilities used by concessionaires and other tenants in the same way they apply to the parts of the airport directly under the airport operator's control. That is, terminal facilities designed or constructed after the regulation becomes effective must be accessible, including the parts of the facility to be used by concessionaires and tenants. With respect to existing facilities, only those portions of the facilities used by tenants which are directly concerned with the provision of air transportation services (e.g. ticketing, baggage handling, or boarding areas) must be made accessible within the three-year period. However, if a terminal reconstruction results in significant renovation of space used or to be used by concessionaires (e.g. restaurants, stores), then this space must be made accessible.

§ 27.73 Federal Railroad Administration—Railroads. This section applies to passenger railroad service receiving Federal financial assistance through the Federal Railroad Administration (principally the National Railroad Passenger Corporation's Amtrak service). Amtrak commented extensively on the section, and other comments were received from state departments of transportation and handicapped individuals and groups representing them.

Subparagraph (a)(1)—New fixed facilities. Relatively few changes have been made to the language of the NPRM in this subparagraph. Most of these changes are purely editorial (e.g., the deletion of the words "referenced in § 27.67(c)" following "ANSI standards" in (a)(1)(i)). There were a few minor substantive changes as well. In (a)(1)(ii)(A), the first sentence was deleted as unnecessary. The subparagraph now begins by saying that "station design and construction" must permit the efficient movement of handicapped persons through the station. In (a)(1)(ii)(B), the word "wheelchair" has been deleted, causing the provision to state that the international accessibility symbol must be displayed at "accessible" entrances. The word "wheelchair" is not needed in this context. The last sentence of (a)(1)(ii)(E) now provides that when level-entry boarding is not provided, lifts, ramps or other suitable devices must be provided to facilitate entry into trains by wheelchair users. This clarifies the meaning of the provision. The provision regarding teletypewriter (TTY) service [(a)(1)(ii)(G)] for the hearing impaired was rewritten to be consistent with the parallel provision in the standards for new airports. It now provides that recipients shall make available a toll-free reservation and information number with TTY capabilities to permit hearing impaired persons using TTY equipment to readily obtain information or make reservations

for any services provided by a recipient. The intent of this requirement is that a person with TTY equipment anywhere in the country should be able to call a reservation number to make reservations for or get information about any service provided by a recipient. The parking spaces required of (a)(1)(ii)(I) has been corrected to refer to an 8.33 "percent" rather than "degree" grade. In the same provision, the term "wheelchair confined" has been changed to the term "wheelchair users." The provisions regarding telephones, station information, and public services have been changed in the same ways, and for the same reasons, as the parallel provisions of the airports section of the subpart. In addition, the language of (a)(1)(ii)(E) has been clarified. The provision now requires lifts, ramps, or other suitable devices "where level-entry boarding is not provided."

This subparagraph was not controversial, and the only comment suggesting change recommended that the reference to giving handicapped people "confidence and security in using the facility" [(a)(1)(ii)(J)] be deleted because it might lead to over-protectiveness of handicapped persons on the part of recipients. We think that this general requirement is not likely to produce any ill effects upon handicapped people, and have decided to retain it.

Subparagraph (a)(2)—Existing Facilities. This subparagraph was the most controversial part of the railroads section of the rule, and has been revised extensively in response to comments. The heart of the subparagraph, (a)(2)(ii), structural changes, has been rewritten. In the NPRM, this provision required all existing stations to be made accessible within five years of the effective date of the section. However, a recipient could request an exemption for up to ten percent of its stations which have the lowest utilization rates.

Amtrak asked for a 10-year compliance period, requested that only one station be required to conform to the regulations within any large urban area, and said that stations outside of urban areas should not have to conform if there is another station appropriately modified within 50 miles. Amtrak also questioned the utility of the provision of the NPRM permitting recipients to ask for an exemption from the accessibility requirement of up to 10 percent of its least used stations, noting that because of route restructuring proposals it is likely that stations and communities served are likely to change. Two state transportation agencies also opposed the 10 percent exemption provision, one of which suggested that it be modified to be based on specific criteria (e.g., low utilization, high costs for modification) rather than tied to a percentage.

The final rule incorporates many of these comments. Subparagraph (a)(2)(ii) now simply states that stations shall be modified to make them accessible. A new subparagraph (a)(2)(iii) sets forth a phased timetable for achieving accessibility. This timetable establishes a system analogous to the key station concept which is used for rapid rail stations, described in Subpart E of the rule. Within five years of the effective date of the section, a recipient must make accessible at least one station in each Standard Metropolitan Statistical Area (SMSA) it serves. An SMSA is an area defined by the Bureau of Census as including a city of 50,000 or more population and its surrounding county or counties. Where there is more than one station in an SMSA, a recipient shall select the most heavily used station, in terms of passenger volume, for this first-phase modification. Within 10 years of the effective date of this section, a recipient shall make the other stations in the SMSA accessible. This provision retains the concept that all stations be made accessible. However, it permits a recipient to spread the costs of modification out over a longer period of time, while also ensuring that the most important station in an urban area will become accessible within a five-year period.

The key station concept used in the final rule also applies to rural stations. Within five years, a recipient must make accessible all stations located outside SMSAs that are not located within 50 highway miles of an accessible station. If there are two or more stations located within 50 highway miles of one another, the recipient is directed to choose the station with the highest passenger volume for the first-stage modification. Remaining stations must be modified within 10 years from the effective date of the section. Again, the intent of the rule is to spread the cost to the recipient of modifying all stations over a longer period of time, while still ensuring that key stations in rural areas are available to handicapped persons within a moderate distance.

The 10 percent exemption provision has been dropped in favor of a new waiver provision ([(a)(2)(iv)]. The waiver provision permits a recipient to petition for a waiver within six years from the effective date of the section from the requirement of making any "second-stage" station (i.e. one of those stations which does not have to be modified within five years) accessible. A six-year period is allowed because it will permit recipients and consumers at least a year after first-stage modifications have been completed to gather information and views concerning the impact of waiving the requirement of modifying second-stage stations.

In order to get a waiver for a particular station, a recipient will have to submit a written justification to the Federal Railroad Administrator. The justification must include the record of a community consultative process, including a transcript of a public hearing and consultation with handicapped persons and their organizations in the affected area. Before granting a waiver for a particular station, the Administrator and the Interstate Commerce Commission will evaluate the potential for high utilization by handicapped persons, considering, among other factors, the cost of making necessary modifications, the availability of alternative accessible service to transport handicapped persons from the affected area to accessible stations, and other factors which may be pertinent. The record of the community consultative process will also be reviewed as part of the Department decision-making process. The final decision on the petition for waiver, as provided in the NPRM, will be made jointly by representatives of FRA and the Interstate Commerce Commission. If the two agencies do not agree, the waiver request will be denied.

Amtrak also requested that it not be required to modify shops, restaurants and other facilities in stations that are not directly connected with the provision of rail transportation. The rule's provisions for railroad station concessionaires are the same as for concessionaires at airports, which do not require most concession facilities to be made accessible in existing stations. Another Amtrak proposal called for the rule to allocate costs among recipients of federal funds in proportion to the passengers each recipient serves in a jointly used facility. For example, if Amtrak, a commuter rail operation, and a rapid rail system all use the same train station, Amtrak's proposal would prorate the cost of needed modifications among the three recipients of DOT funds based on how many passengers of each entity used the station. The problem of allocating costs and allocating modification responsibilities among recipients jointly using the same facility is a difficult one. The Department of Transportation has decided to defer resolution of this problem, since it was not explicitly raised by the NPRM. We

anticipate taking action in the near future to address this problem.

Paragraph (b)—Rail Vehicles. Amtrak requested that this provision require program accessibility for rail vehicles (i.e. one accessible car per train) to be accomplished in five years rather than in three years, as proposed by the NPRM. It argued that given vehicle orders already made to manufacturers for inaccessible equipment, the three-year deadline would be very difficult and excessively costly to meet through acquisition of new vehicles, and would require the retrofitting of many old vehicles with lifts. We have accepted the five-year suggestion which is consistent with the rule's five-year deadline for key station accessibility. As a general matter, the Department believes it advisable to avoid the necessity for retrofitting old equipment wherever possible. Only two changes have been made in paragraph (b). A sentence in (b)(2)(iii), stating that if a recipient cannot meet the accessibility requirements of the provision it must either retrofit existing equipment or purchase new accessible equipment has been deleted because it is obvious. Subparagraph (b)(3) has been clarified to state that all new rail "passenger" vehicles purchased after the effective date of the section have to be accessible. There is no intention that the rule apply to non-passenger rail vehicles.

There were relatively few comments on this provision. Some commenters sugested that it would be advisable to require, when a train has an accessible coach and an accessible food service car, that the two accessible cars be adjacent to one another. This arrangement of cars in a train is a sensible idea, which Amtrak should implement where possible.

We also want to emphasize that in making restrooms accessible, and in providing services to handicapped persons generally, recipients should ensure that the dignity and privacy of handicapped persons are respected.

Paragraph (c)—Rail passenger service. There are three substantive changes in this paragraph. One concerns the notice required before "on-call" assistance will be provided to handicapped passengers. Persons requiring the service of an attendant must give 24 hours advance notice in order to receive assistance, compared to the 12 hours required by the NPRM (subparagraphs (c)(3) and (c)(8)(ii)). This change was requested by Amtrak and supported by some state transportation agencies. In our view, the longer period is more reasonable in terms of scheduling personnel to assist handicapped persons. The necessity of notifying Amtrak an extra 12 hours in advance should not prove an unreasonable inconvenience for handicapped persons. Most people make intercity travel plans *and* reservations at least a day in advance in any event; requests for assistance could easily be made at the same time as reservations. For the same reasons, the advance notice for other handicapped persons requiring assistance has been lengthened from three to twelve hours ((c)(3)).

Subparagraph (c)(2), in the final sentence, provides that persons who need to travel with an attendant include those who cannot take care of "any one" of their fundamental personal needs (e.g. eating, elimination), rather than those who cannot take care of "most" of these needs, as the NPRM provided. The NPRM language might have led to uncertainty as to how many fundamental needs a person could not take care of before an attendant was required. While we agree with a commenter who pointed out that a person who needs an attendant is unlikely to travel without one, we believe this provision should be retained to clarify the obligations of recipients. Though another commenter asserted that the term "fundamental personal needs" is too ambiguous to remain in the regulation, we believe that the intent and meaning of this provision are clear enough to inform both recipients and potential passengers of their responsibilities.

The third change to this paragraph is in (c)(9), where the waiver of recipients' obligation to carry handicapped passengers has been limited to passengers using life support equipment that would depend upon the vehicle's power system. This change recognizes that failure of a vehicle power system, and the consequent failure of the life support system, could pose high risks of liability for the recipient. However, recipients should carry passengers with other kinds of life support equipment that can reasonably be carried onto and suitably placed within a passenger car.

In order to clarify the relationship between subparagraphs (c)(3) and (c)(8)(ii), the requirement of (c)(3) that recipients assist persons confined to bed or a stretcher has been deleted. Subparagraph (c)(8)(ii) is now the only provision governing the carriage of stretcher-bound or bedridden passengers.

Subparagraph (c)(13) of the NPRM, which concerned the effective date of the regulations, has been deleted. The effective date of the intercity rail portion of the ruie is now the same as for the rest of the regulation. A new (c)(13) has been added which requires recipients to provide information and training to their employees concerning the proper implementation of the regulation. This provision is designed to ensure that employees of recipients understand their obligations to handicapped passengers and meet these obligations in a well-informed and sensitive manner.

A number of other comments pertained to passenger service. Amtrak requested further elaboration of the "qualifications" of handicapped persons who could not be denied service, suggesting the addition of a criterion such as "able to travel without endangering their own and others' safety." We do not believe that such a criterion is desirable, because it would be difficult to enforce fairly and consistently. Amtrak also suggested that recipients identify in timetables where assistance is not available (e.g. flag stops, closed stations). We think this is a good idea, which Amtrak can implement without a regulatory requirement.

A state transportation agency suggested that the rule address such issues as potential liability to handicapped persons, job descriptions for persons who assist handicapped passengers, and union regulations that may affect assistance to the handicapped. We believe these issues are outside the scope of this rulemaking, and, properly speaking, are not regulatory issues at all. In addition, all these factors are likely to vary considerably among states and localities, and so are not easily susceptible to nationwide rule.

§ 27.75 Federal Highway Administration—Highways. The language of this section has been changed from that of the NPRM in three respects. The reference to § 27.67 in subparagraph (a)(1) and the final sentence of that subparagraph have been deleted, because the term "accessible" is now defined in § 27.5 for new facilities by reference to the ANSI standards. In subparagraph (a)(3)(ii), a minor substantive change has been made. The NPRM permitted exceptions to the requirement of making pedestrian overpasses, underpasses and ramps accessible where it is infeasible for mobility-limited persons to reach the facility because of "terrain" obstacles unrelated to the Federally assisted facility. To be consistent with the language of a January 23, 1979, agreement between the Federal Highway Administration (FHWA) and

the Architectural and Transportation Barriers Compliance Board (A&TBCB) on the subject of pedestrian overpasses, underpasses and ramps, we have substituted for the "terrain obstacles" the words "unusual topographical or architectural obstacles". This language points out that man-made as well as natural obstacles can preclude access to a facility and also emphasizes that, in order to except a facility from the accessibility requirement, the obstacle in question must be beyond the ordinary scope of highway engineering problems. Obstacles able to be overcome with ordinary engineering and construction effort by a state highway department should not form the basis for an exception.

Several state transportation agencies asked for clarification on whether all existing rest area facilities on Federal-aid highways, regardless of the involvement of Federal funds, are required by subparagraph (b)(1) to be made accessible. All existing rest areas on Interstate highways, where the vast majority of rest areas already are accessible, must be made accessible to the handicapped. On other roads, where the patterns of rest area placement and funding are more irregular than on the Interstates, existing rest areas will be made accessible when they are improved using Federal funds, or when the road on which the rest area is located is improved with Federal funds in the area directly in front of the rest area or in the near vicinity (roughly within a mile) of it.

The question of overpasses, underpasses, and ramps for pedestrians was the subject of more comments than any other part of this section. Comments were fairly evenly divided among those who felt that the 10 percent maximum gradient proposed by the NPRM was too steep (principally handicapped persons and groups representing them) and those who felt that a higher gradient was more reasonable (principally transportation agencies). Both concerns are valid. For wheelchair users, particularly those whose arms and upper body are not strong, wheeling a chair up a 10 percent grade, while possible, may be a laborious task. On the other hand, the length of the ramp necessary for maintaining the 8.33 percent gradient set forth in the ANSI standards means that more land may have to be acquired for the facility and that persons other than wheelchair users, unwilling to take the time to use the extended ramps, may simply cross the highway at grade, diminishing the safety advantage for which the pedestrian facility was built. The length of the ramp, in itself, may also constitute a barrier to wheelchair users. Faced with these conflicting interests, we decided to keep the 10 percent gradient proposed by the NPRM. We believe that this is a reasonable compromise which achieves some, though not all, of the legitimate goals expressed by both groups of commenters.

DOT and FHWA will encourage state highway departments to construct pedestrian facilities with an 8.33 percent gradient whenever it is feasible. For example, where there is sufficient space, barriers (e.g., fences around Interstate highway rights-of-way) to prevent pedestrians from crossing at grade, or where there are heavy concentrations of elderly people in an area, we believe that the 8.33 percent gradient is a good idea. This policy is one which we believe it best to implement through the normal highway project planning process, however, rather than through a mandatory, across-the-board regulation.

The regulation does not require existing pedestrian facilities to be made accessible. However, the FHWA–A&TBCB agreement referred to above provides that FHWA will establish a program urging the states to create an inventory of overpasses and underpasses constructed or altered with Federal-aid funds after September 2, 1969. The states will also be urged to pinpoint overpasses and underpasses in need of modification, under criteria to be developed by FHWA and the A&TBCB. FHWA will urge each state to establish a timetable for making needed modifications.

Several commenters raised the question of the meaning of the word "constructed", in subparagraph (a)(2), which requires that all pedestrian crosswalks "constructed" with Federal financial assistance to have curb cuts. This provision expressly relies on 23 U.S.C. 402(b)(1)(F), which requires curbs "constructed or replaced" on or after July 1, 1976 to be accessible to wheelchair users and other physically handicapped persons. In other words, if there is a physical alteration or repair to an existing curb, or a new curb is put in place as a result, for example, of a project to widen a street or remodel an intersection, curb cuts are a required part of the project at crosswalks. Projects not physically affecting the curb itself—such as painting crosswalk lines over the curb—may be carried out without adding curb cuts.

Several groups representing handicapped persons and various individual commenters asked that curb cuts be required in all existing curbs on Federal-aid highways, or at least in proximity to bus or rapid rail stops. As stated above, a specific statutory provision addresses the question of curb cuts. We believe that this provision is sufficient.

One commenter feared that the incorporation of the ANSI standards into this section might require highway departments to follow some highly unconventional engineering practices, such as having a sidewalk gradient of five percent adjoining a street with a gradient of 10 percent. We do not intend to require that sidewalk gradients differ from the gradients of the adjacent roadways.

Organizations representing the blind expressed concern over the impact upon blind people of "right turn on red" programs and what they perceive as the phasing out of audible traffic signals. These concerns were not addressed by the NPRM and are outside the scope of this rulemaking.

Subpart E—Program Accessibility Requirements in Specific Operating Administration Programs: Mass Transportation

§ *27.81 Purpose.* The substance of this section is unchanged from the NPRM, and simply states that the subpart implements section 504 and other statutes applicable to this section. The substance of the NPRM's § 27.83, "Objective," has been merged into this Section. Section 27.85 of the NPRM, "Scope," has been deleted as unnecessary. Section 27.87 of the NPRM, "Definitions," has also been deleted. The definitions it stated have been shifted to § 27.5 in order to consolidate all definitions in one section.

There were very few comments about these introductory sections. Two comments asked for specific mention that the purpose of the regulation included consideration of the needs of the mentally ill. Mentally ill persons are covered by the general definition of handicapped, and further mention appears superfluous. Another commenter asked that the "objectives" section indicate clearly whether existing Urban Mass Transportation Administration (UMTA) regulations on the transportation of elderly and handicapped persons will be withdrawn. This rule supersedes the existing UMTA regulations (49 CFR Part 609, 49 CFR 613.204, and the appendix to 49 CFR Part 613, Subpart B, on 49 CFR 613.204), except that the requirements for Transbus remain separate from this rule (49 CFR 609, 15(a)). The appendix to 23 CFR Part 450, Subpart A, on planning for elderly and handicapped persons under the joint UMTA-Federal Highway

Administration planning regulations will be revised to reflect the requirements of this regulation. Although most of the advisory information in that appendix remains applicable, it will be revised to discuss the new section 504 regulation and the fact that some matters, such as wheelchair accessibility to fixed route bus systems, are no longer matters of local option.

§ 27.83 Fixed Facilities for the Public (Section 27.95 in the NPRM). The changes to this section, while considerable, are editorial in nature. Paragraphs (a), (c), (d), (e) and (f) have been deleted as repetitive of material contained in subparts A and C of the rule. The remaining provisions have been renumbered accordingly. The titles of the final rule's paragraphs (a) and (b) have been changed to reflect more accurately the contents of the paragraphs. The contents have not been changed from the NPRM, except that a reference to the ANSI standards in paragraph (b) has been changed to refer to § 27.67 rather than to the deleted paragraph (f) of the NPRM version of § 27.95.

Most comments on this portion of the NPRM concerned paragraph (a) of the NPRM, which has been deleted. The comments wanted more specificity in the statements of this paragraph's requirements in some cases, and other comments objected to the paragraph's provision for exceptions to accessibility requirements. The general material in this paragraph is clearly explained elsewhere in general sections of the rule; provisions as to exemptions are found in the program-specific portions of subpart E.

Comments on paragraphs (b) and (c) of the NPRM (paragraph (a) of the final rule) asked for greater specificity, particularly as to schedules for modification of facilities. Some commenters thought DOT should require a particular percentage of modification to be completed each year, for example. We believe that the sections are sufficiently specific as they stand. Given the diversity of modification tasks nationwide, greater specificity in this section of general application on scheduling modifications is not desirable. More specificity is provided in the sections on specific transportation modes.

There were few other comments. One commenter asked for specific mention of curb cuts. We believe those provisions requiring attention to the needs of handicapped persons in loading, unloading, and parking areas are sufficient to cover this concern.

The NPRM's § 27.97, which generally set forth the rule's requirements for vehicles, is applicable generally, not just in subpart E. Therefore, it has been deleted from its place in the NPRM and moved to subpart C.

§ 27.85 Fixed Route Bus Systems (Section 27.101 in the NPRM). In most communities, bus systems provide the only fixed route means of public transportation. The accessibility of bus systems to the handicapped is crucial if handicapped people in these communities are not to be denied the benefits of Federal aid to urban mass transportation. Even in cities with other modes of mass transit, the bus system—which normally has a much more comprehensive route structure than rail and other means of transportation—is a key to ensuring that handicapped people have an equitable opportunity to use transportation services.

The Department has changed this section from the NPRM in a number of ways. The first of these changes is in subparagraph (a)(1)(ii), where the definition of the accessibility of bus systems has been rewritten. The language of the NPRM—"off-peak frequency service or half of the peak service, whichever is greater, during off-peak hours as well as peak hours"—was confusing. For example, it could be interpreted to require bus systems to increase the frequency of its off-peak runs, something that the Department never meant to require. Therefore, the paragraph now provides that at least one-half of buses in peak hour service must be accessible in order to achieve program accessibility. During off-peak hours, a recipient must deploy all of its available accessible buses before it may place inaccessible buses in service.

In order to limit the need to retrofit existing buses and to permit bus systems, particularly those with newer fleets, to spread the cost of acquiring accessible buses over a longer period of time, thereby easing the short-term expenditures these systems must make, subparagraph (a)(2) has been changed to extend the outer time limit for program accessibility from 6 to 10 years. In addition, a new subparagraph (a)(3) has been added to the section, providing that nothing in the section shall require any recipient to install a lift on any bus for which a solicitation was issued on or before February 15, 1977. Manufacturers have been required by UMTA regulations to offer a wheelchair accessibility option for all new, standard, full-sized urban transit buses for which a solicitation was issued after that date. Together with the 10-year period during which new accessible buses can be purchased to make a fleet accessible by accretion, this provision will also help to limit the need to retrofit existing buses and to keep recipients' costs within reasonable bounds.

Those systems with older fleets will presumably be able to meet this standard in less than 10 years through normal bus replacement. All cities are likely to try to achieve program accessibility as quickly as possible, since § 27.97 requires the provision of interim accessible transportation during the period before program accessibility is reached. However, some systems with relatively new fleets may need the full 10 years in order to avoid large scale retrofitting of existing buses. The vast majority of commenters opposed retrofitting, raising significant questions about its cost—effectiveness and possible effects on the structural integrity of existing buses.

Given the extension to 10 years and the revised version of the program accessibility standard, the Department feels that the former provision about extending the six-year deadline "by one year for each 10 percent above the 50 percent of the buses that would have to be accessible" is unnecessary. Therefore, that provision has been deleted.

The final rule requires that all new buses for which solicitations are issued after the effective date of the part be accessible. In addition, to avoid the risk that a large number of procurement solicitations for inaccessible buses could be issued before the effective date of this regulation, UMTA intends to limit its consideration of bus grants to those that provide for accessible buses. This paragraph's requirement as they pertain to new, standard, full-size urban transit buses, will remain in effect until solicitations for those buses must use UMTA's "Transbus Procurement Requirements."

The requirement that all new buses be accessible will mean that eventually all buses will be accessible. The requirement in paragraph (a) of this section (program accessibility) that half of the peak hour bus service be accessible is a minimum level of accessibility that must be achieved within 10 years.

The bus system accessibility section of the NPRM received numerous comments. We have carefully considered these comments in writing the final rule. The comments, and our thinking in response to them, can be discussed most conveniently in terms of the following categories:

1. *Accessibility in General.* About 180 comments addressed the issue of

whether mainline bus service should be made accessible. About half these comments favored the concept of requiring accessibility. Handicapped individuals and their groups were strongly represented among the comments advocating the requirement; transit operators and state transportation agencies were heavily represented among the comments expressing the opposing view.

The comments favoring the requirement of accessibility cited the goal of incorporating handicapped people into the mainstream of society, providing independent mobility for them, permitting them to use the fruits of their tax dollars, and avoiding what they regarded as the pitfalls of "special service" paratransit (e.g. long lead times for reservations, waiting time, limitations on type and length of trips, unreliability). Opponents of the requirement asserted that the costs of accessibility are not justified by what they viewed as the small population that would probably take advantage of the services. Separate special service would do a better job for handicapped people at a lower cost, in their view, and they point to the difficulty which handicapped persons may have in getting to and from bus stops, particularly in bad weather.

The Department believes that major modes of public transportation should be made accessible. In addition, bus accessibility is a well-settled DOT policy, as evidenced by the Transbus mandate. In connection with his Transbus decision issued on May 19, 1977, Secretary of Transportation Brock Adams considered in depth the arguments for and against requiring buses to be accessible. The Secretary decided then, and in this rulemaking reaffirms, that accessibility of buses is an important part of the Department's urban mass transportation policy.

2. *Costs.* The costs of making bus systems accessible occasioned a great deal of comment. Many transit operators estimated that mainline accessibility would markedly increase their annual operating costs and cause them to incur heavy capital costs. For example, eight California transit systems said their annual operating costs would increase from one to 15 percent, while they would incur additional capital costs from around $500,000 to $16 million. Most figures that were provided simply added the costs of accessible mainline service to present costs. However, a number of comments compared the prospective costs of mainline accessible service to the prospective costs of special paratransit service. Some of these commenters thought the costs of the two systems would be about the same, or that mainline service would cost less. The majority, however, felt that mainline service would be costlier. Summing up the views of these commenters, the American Public Transit Association (APTA) estimated that nationally, annual operating costs for mainline accessible systems would be $300 million, versus $159 million for "dial-a-ride" paratransit service. Some smaller transit authorities asserted that the costs inherent in the requirements of this regulation would cause them to curtail seriously or cease operations.

The Department of Transportation has looked carefully at the costs and has concluded that the costs of bus accessibility are likely to be lower than commenters suggested. Some of the difference may be explained by cost assumptions made by the commenters, who included significant sums for such matters as presumed slowing of service, increased cost for garages (based on presumed need for housing greater numbers of vehicles), increased insurance costs, need for additional personnel, additional training costs, bus stops and shelter modifications, and so forth. In the Department's view, some of these assumptions may not be well founded. The costs assigned to the items may be overstated, and it is likely that many of the costs would be incurred under alternatives other than program accessibility. With respect to cost comparisons between mainline and special services, valid comparisons are possible only if the special services involved are truly comparable (in terms of factors such as trip time, waiting time, trip purpose restrictions, hours of service, etc.) to mainline accessible service. From the comments, it was difficult to determine whether the services proposed as alternatives to mainline accessibility were truly comparable. Comments from handicapped persons about existing special services suggested that existing special services are not truly comparable.

While not denying the reality of increased costs for operators, the Department is not persuaded that the financial impact, in absolute or relative terms, is as high as some commenters assert. Nevertheless, the Department took important steps to mitigate the cost impact of the rule. The stretching out of the compliance period from six to 10 years is one example of a change that should help to mitigate costs. In addition, the provision that a bus for which a solicitation was issued on or before February 15, 1977, need not be retrofitted with lifts will result in some capital savings for recipients. This provision, in conjunction with the longer compliance period, will probably result in very few buses having to be retrofitted with lifts in order to reach program accessibility.

The capital cost impact of this portion of the regulation will therefore consist principally of incremental costs of lift-equipped buses over the costs of inaccessible new buses. This cost appears to be within reasonable bounds. The marginal increase in operating costs is estimated to average about 1.3 percent.

3. *Benefits.* The principal benefit that this portion of the regulation attempts to confer is making it possible for wheelchair users to use mainline buses. A large majority of the comments relevant to this issue suggested that the provision of this benefit may not be meaningful, predicting little or no increase in the use of mainline buses by handicapped persons as the result of the rule. These commenters cited the difficulty of getting from home to the bus, given the presence of other barriers in the community, as the biggest reason for this predicted lack of ridership. Other problems mentioned were the problem of transferring to other routes when not all of the buses during peak hours were accessible, and concern by the handicapped about the safety of accessible equipment. The minority of commenters who believed that accessibility of mainline service would increase ridership alluded to such factors as likelihood of building up a handicapped ridership base when accessible service was actually provided, the probable diversion of handicapped from taxis to less expensive bus service when accessible service became available, and the assistance to bus ridership that could be provided by demand-responsive supplemental service.

Our starting point for estimating the probable benefits to be gained from accessible mainline service is the potential market to be served. The "National Survey of Transportation Handicapped Persons" (1978) performed for the Department indicated that there were about 1.5 million people who live within a half-mile of a bus stop and for whom bus steps are a barrier which would prevent them from using buses. Given the increase in the average age of the population, it is likely that the number and proportion of mobility-handicapped people will increase, because as people age, the likelihood that they may become mobility-handicapped increases. Not all these

people could get to a bus stop, given the existence of other barriers. The Department supports the removal generally of barriers to the mobility of handicapped people, but is only in a position to mandate the removal of barriers in those programs to which it provides financial assistance. However, actions are now being taken to eliminate these barriers, and these measures will enable more handicapped persons to use an accessible system.

We believe that the use of accessible bus service by handicapped people will increase over time. Given the history of almost total inaccessibility, most handicapped people probably do not think first of the city bus when they make transportation plans. It is necessary to create accessible service and educate the public about it before the significant potential market of handicapped users is likely to ride the buses in large numbers. The Department is persuaded that, under this rule, and with the cooperation of transit operators, mainline bus service can be safe, convenient, and attractive for handicapped persons.

4. *The Use of Lifts.* Pending the introduction of Transbus, the only technology for making buses accessible to handicapped people is the lift. After the effective date of the rule, recipients may issue solicitations only for accessible buses. This requirement will not be a major policy change for a number of the nation's largest bus systems, including those serving Los Angeles, Detroit, Washington, Seattle, Houston, and St. Louis, which have already decided to purchase at least some accessible new buses. Given the provisions of the final rule, it should be unnecessary in almost all cases to retrofit previously purchased buses with lifts, an expensive and technically difficult process opposed by the vast majority of commenters who discussed retrofit.

Commenters who opposed the requirement to purchase only accessible new buses focused on three main issues. They stated that the use of lifts would greatly slow bus service; that lifts are unsafe, and the presence of some handicapped persons aboard buses as the result of the use of lifts could pose a hazard in an emergency evacuation situation; and that lift technology is unreliable and lifts do not work properly. The case in point cited by exponents of this final point is the St. Louis bus system, which reports much trouble with its lift-equipped buses.

With respect to the argument that the use of lifts would greatly slow bus service, the Department is somewhat skeptical. While there may be some slowing of service in some circumstances, this problem is not likely to be of the scope or magnitude suggested. Transit systems should, after a time, gain experience concerning the points on their routes where it is most likely that lifts will be used on a regular basis. Any regular delays of this kind can and should be worked into schedules in such a way that service disruptions or undue slowdowns of service will be minimal.

The concerns expressed about safety went first to the fit between the lift and wheelchairs—lifts might not be able to receive and "lock onto" all sizes of chairs, for example—and second to the evacuation of wheelchairs from the bus in an emergency. To the extent that the first problem exists, it can be remedied by the improvements to the design and construction of new lifts and remedial safety devices or warnings on existing lifts. With respect to emergency evaucation, recipients should develop, and train bus operators in, means of expeditiously evacuating wheelchair occupants from buses in emergencies as part of their accessibility programs and policies. We feel that seating in buses can be designed to minimize any obstruction by a wheelchair to the evacuation of other passengers. Obviously, it is desirable in any emergency evacuation situation that the evacuees be as mobile as possible, but this general statement is not a sufficient reason for keeping mobility-limited people off public conveyances.

We are aware that lifts in present use have experienced technical problems. Manufacturers of lifts commented that they were presently working to make needed improvements in lifts. In addition, we believe that a requirement for lifts will create a much stronger demand for lift equipment, which in turn will encourage companies with high engineering skills and production capacity to enter the market. The result should be the availability of good equipment at competitive prices. Moreover, the time lag before lift-equipped buses begin to arrive on the streets in response to the rule's deadline for orders means that it will be about 18 months from the effective date of this rule before the buses are delivered. This allows some additional time for the production of improved lifts. It is the Department's conclusion that lifts are a feasible solution to the problem of making buses accessible.

5. *Comments Regarding the Transbus.* Many commenters saw the docket on the NPRM as a forum to re-open the Secretary of Transportation's May 1977 decision to mandate Transbus. Comments both in favor of the Transbus mandate and against it (or asking for delay in its implementation) were received. The Transbus decision was made well before the section 504 NPRM was published, and stands independently of any of the decisions made as part of the present rulemaking. The Transbus decision is referenced in the general requirement of accessibility made by this rule, and is not subject to modification as part of this rulemaking. Regardless of the timing of the availability of Transbuses, recipients are bound by this final rule to issue solicitations only for accessible buses after the effective date of this rule.

§ 27.87 Rapid and Commuter Rail Systems. The NPRM's section 27.103, entitled "Fixed guideway systems accessibility," dealt with light rail systems as well as with rapid and commuter rail systems. In the final rule, light rail systems are discussed in a separate section, § 27.89. The provisions of the rapid and commuter rail portion of the rule have been extensively revised.

The new paragraph (a) provides that program accessibility in rapid and commuter rail systems is achieved when a system, when viewed in its entirety, is accessible to handicapped persons, including wheelchair users. All stations must be accessible to handicapped persons who can use steps (e.g., fully mobile blind or hearing-impaired persons); key stations must also be accessible to wheelchair users.

The rule provides that recipients must treat as key stations those stations which meet any one of several criteria. A station must be made accessible if it is (1) a transfer point on a rail line or between rail lines (e.g., where two subway lines cross), (2) a major interchange point with other modes (e.g., a rapid rail station serving an airport; a subway station adjacent to a stop serving three bus lines; this criterion does not make every rail station adjacent to a bus stop a key station, however), (3) a station at the end of a line (unless the station is close to another accessible station), (4) a station serving major activity centers (employment or government centers, institutions of higher learning, or hospitals or health care facilities), (5) a station that is a special trip generator for sizable numbers of handicapped persons (e.g., a station serving a cluster of high-rise, high-density apartment buildings with a large handicapped population), or (6) in the case of rapid rail, a station where passenger

boardings exceed average station boardings by 15 percent.

The key station concept was suggested during the comment period as an alternative to 100 percent station accessibility. Representatives of the city of New York proposed that 10 percent of the New York City rapid rail stations would be an appropriate level of key stations. These discussions focused the Department's attention on the idea of a key station approach, but further reflection and analysis showed that the service quality from a very low level of key station accessibility as proposed by New York was not adequate. For this reason, the Department has adopted criteria for determining what are key stations to ensure that heavily used stations and those that are trip generators for the handicapped will become accessible. Using these criteria, effective rail transportation service can be provided at a significantly lower cost than would be the case if all stations were required to be accessible.

For commuter rail systems, which serve less densely populated areas and which have stations spread over a wider geographic area than rapid rail systems, application of these criteria alone might well result in the exemption of so many stations that the system, viewed in its entirety, would not be accessible. Therefore, an additional criterion based on distance from other accessible stations has been imposed for commuter rail systems. This criterion would identify any station which is distant from any other accessible station as a key station. "Distant" is not defined, but our intent is that making every third station accessible would generally satisfy this criterion.

The regulation does not specify a percentage of stations that must satisfy these criteria. However, a reasonable estimate is that application of these criteria will result in a nationwide average of about 40 percent of rapid rail stations being made accessible, although this figure may be as much as 60 percent in some cities.

With respect to rail vehicles, the regulation requires all vehicles to be accessible to handicapped persons who can use steps and one vehicle per train to be accessible to wheelchair users. Paragraph (b) generally requires new rapid rail vehicles for which solicitations are issued after the effective date of the regulation to be accessible.

While 49 CFR Part 609, UMTA's regulation governing accessibility of handicapped persons to transportation, is superseded by this 504 regulation, the former §§ 609.15–609.19 should continue to be used by recipients as guidance for determining accessibility features to be incorporated in new equipment until new guidance on what specific accessibility features are required, probably in the form of an UMTA circular, is issued. One accessibility feature in rapid rail systems—a device to close the gap between vehicle exits and station platforms in order to make *entering* and leaving the vehicles safe and convenient for handicapped people—is not required to be provided, if needed, until January 1, 1983. This delay is intended to permit a reasonable time for further development and testing of gap-closing devices. New commuter rail vehicles for which solicitations are issued on or after January 1, 1983, must be accessible to wheelchair users. This date was selected in order to permit a reasonable time for the development and testing of car-borne lifts which may be necessary to make cars accessible in some systems.

The regulation also requires connector service between accessible and inaccessible rapid rail stations. This service is intended to provide at least a partial substitute for the rapid rail service between stations that is unavailable because some stations are inaccessible. The connector service may be provided by regular bus routes, special bus routes, special service paratransit, or any other accessible means of transportation provided by a recipient that will transport a handicapped person from an inaccessible rapid rail station to the nearest accessible station in the person's direction of travel, or vice-versa. The connector service, together with accessible rail stations, must provide to handicapped persons a level of service reasonably comparable to that provided by the rapid rail system for a non-handicapped person.

As an indication of this comparability, the service generally should avoid requiring a handicapped person to transfer more than one time more than a non-handicapped person would to get to their destination. This is not a firm, invariable requirement, however. If service of approximately equivalent speed can be provided, variation in the number of transfers permitted may be possible.

It should be pointed out that one way to provide adequate connector service with accessible mainline buses might be route restructing, rather than the addition of new service.

The timing of the connector service requirement parallels that of the rapid rail system program accessibility requirement. Complete connector service must be in place within 30 years from the effective date of the regulation. Within this time period, there must be a steady build-up of connector service that is coordinated with the completion of key stations. No later than 12 years from the rule's effective date, connector service must provide effective and efficient use of key stations that have been made accessible at that time.

Subparagraph (a)(4) sets the time schedule for accomplishing program accessibility in rapid and commuter rail systems. Accessibility must be achieved as soon as practicable, but not later than 3 years after the effective date of the regulation, except that this time limit is extended to 30 years for extraordinarily expensive structural changes to, or replacement of, existing fixed facilities needed to achieve program accessibility. Changes to accommodate the needs of handicapped persons who can use steps—such as blind or hearing-impaired persons—are expected to be accomplished within three years, since these changes generally involve low-capital expenditure projects and are not "extraordinarily expensive." The Department generally considers elevators and vehicle lifts to be "extraordinarily expensive" and has selected the extended deadlines to permit adequate time for such improvements to be made.

It is the policy of the Department that the most essential key stations (about one-third of all key stations) be made accessible within the first 12 years of the program. However, the Department has decided that a 30-year period for obtaining full program accessibility is justified. This decision was made principally on the basis of the difficulty and high cost of making needed structural changes (e.g., retrofitting existing subway stations in New York City or Philadelphia with elevators).

The Department believes that it is reasonable to spread out the work and cost of these changes over a relatively extended period. However, the Department intends to ensure, through its planning and grant process, that recipients proceed with needed modifications at a reasonable rate. The regulation requires that each recipient make steady progress over the entire 30-year period, in compliance with a required transition plan. After 12 years, the Department intends to require an assessment at the national and local levels of the progress of accessibility work and its impact on ridership.

The time limit for vehicle accessibility is five years from the effective date of the regulation in rapid rail systems and 10 years for commuter rail systems for

extraordinarily expensive changes to, or replacement of, existing vehicles. Less expensive changes in rolling stock, to make the vehicles accessible to and usable by handicapped persons who can use steps, must still be made within three years.

The Department is aware, as many commenters have pointed out, that carrying out this section will be costly. The Department estimates that over the 30-year compliance period, achieving program accessibility in rapid rail systems will cost about $1 billion. This estimate covers capital costs for fixed facilities and vehicles, incremental operating costs, and connector service which does not make any use of mainline accessible bus routes, and assumes that a national average of 40 percent of stations will be made accessible. The actual cost will be lower to the extent that cities are able to use mainline accessible bus lines for connector service, thereby saving some of the cost of a complete, separate connector service system. The 30-year compliance cost for commuter rail systems, also assuming that about 40 percent of stations are made accessible, will be about $290 million. The 30-year compliance period will enable recipients to spread these costs over a long period, so as to make them easier to bear.

Many commenters who discussed accessibility for rapid rail systems favored accessibility. The majority of the comments from handicapped persons and their groups favored a shorter deadline for program accessibility—12 or 20 years—than the 30 year deadline chosen by the Department. The Department understands this view; handicapped people have already waited a long time for the removal of transportation barriers. The Department believes, however, that it must take care to mandate only what can be accomplished practically by recipients and by the Department. The key station concept received support in the comments both from transit operators and groups representing the handicapped.

With respect to rapid rail vehicles, two rapid rail system operators expressed concern about the vehicle/platform gap problem. This problem is addressed by the rule's provision for gap-closing devices in cars for which solicitations are issued on or after January 1, 1983. Other comments mentioned the need for some interior refitting of vehicles; the timing of this refitting will depend on its extensiveness and cost. As the rule provides, accessibility (including interior refitting) that is not extraordinarily expensive must be accomplished within three years.

Most operators commenting on the NPRM supported a "local option" concept, in which each operator or local government would select the mix of transit services best suited to provide mobility for handicapped persons.

There is room for considerable local planning in carrying out this regulation, with respect to planning, connector service, and determination of some key stations. However, the concept of local option as expressed by many commenters is inconsistent with the assurance of providing program accessibility which section 504 and the HEW guidelines require.

As with bus systems, comments questioned the likelihood of significant use of accessible rail systems by handicapped riders. Present experience is scanty. Systems which are partly or wholly accessible, such as San Francisco's BART and Washington, D.C.'s Metro, report relatively small but growing numbers of handicapped users of their station elevators. It is reasonable to believe that these numbers will increase as more accessible buses begin to feed into the rail systems and as other barriers to the movement of handicapped people are eliminated. While it is clear that awareness of the existence of accessible transit must increase and other barriers must decrease before the full potential for handicapped ridership could be realized, it is also clear that there is a currently untapped market for transit service which accessible systems are capable of serving. It should also be pointed out that accessible systems may make the use of public transit more convenient, and consequently more attractive, for many people who are not handicapped.

The range of comments concerning commuter rail was quite similar to that concerning rapid rail. One difference concerned what most transit operators commenting regard as the unique nature of commuter rail, which runs on track also used by other rail traffic. This, the operators said, poses problems for them. Increasing the time a commuter train needs to stay at a station in order to pick up handicapped passengers may disrupt schedules for other trains. Moreover, in high-platform stations, there may be a considerably larger car/platform gap than in rapid rail stations. Also, the fact that commuter rail systems operate in areas of lower population density means that relatively few handicapped riders are likely to use accessible service.

It is probable that the number of handicapped passengers, like the number of passengers in general, is likely to be lower for commuter rail than for rapid rail. However, there are fewer public transportation options for people living in areas served by commuter rail than for people in more densely populated areas. This makes making the accessibility of commuter rail even more important for those people.

The key station provisions of the rule should improve the ratio of costs to benefits for commuter rail operations. As with other modes of transportation, however, the Department's decisions in the commuter rail area cannot be exclusively tied to cost-benefit analysis. The human value of providing accessible transit services to all persons must weigh heavily in the decision. Sophisticated traffic management techniques should permit schedules of commuter trains and freight trains which share relatively few lines to be arranged so that the commuter trains can safely pick up handicapped passengers without unduly delaying other traffic.

Commuter rail systems differ. Some have high platform stations flush with car entry level. Others have entry from ground level. Others have combinations of both. What the rule requires is accessibility, not any particular technique for achieving accessibility. If a system has mostly high platform stations flush with car entry level, it might modify its other stations along the same lines, thus obviating any need to equip its rolling stock or stations with lifts. On the other hand, so long as train entry areas are accessible to handicapped persons, a system may provide access to its vehicles with lifts and avoid modifying most platforms. Platform/train gaps could be closed by automatic equipment extending from cars or by "gangplank" devices either carried on the train or stored in the station and operated by train or station personnel. Where it is most appropriate for commuter rail vehicles to become accessible through the use of lifts, the January 1, 1983, solicitation date plus the approximately two-year period between order and delivery gives recipients and manufacturers sufficient time to develop and deploy new technology.

Other comments on the commuter rail section of the rule paralleled the rapid rail comments concerning the key station concept, the merits of accessibility as a goal, and "local option." The Department's thinking on these issues is the same as in the rapid rail area, with the exception that one of the criteria used for determining which stations are key stations in rapid rail

systems—stations boarding 15 percent more passengers than the system average—is not applicable to commuter rail systems.

§ 27.89 Light Rail Systems. This section, which treats rail (trolley) systems separately from commuter rail and rapid rail systems, is new. The general accessibility requirement for light rail systems, like that for other modes, is that a system, when viewed in its entirety, must be accessible to handicapped persons, including wheelchair users.

The requirement for station accessibility is similar to that for rapid rail. All stations must be accessible to handicapped persons who can use steps, and key stations must be accessible to wheelchair users. Key stations are generally defined by many of the same criteria used for rapid and commuter rail key stations, and the rationale for the key station concept discussed in connection with rapid and commuter rail systems applies to light rail stations as well. Relatively low-capital changes to be made to stations or vehicles are expected to be made within three years. The three-year general time limit is extended to 20 years for extraordinarily expensive structural changes to, or replacement of, existing fixed facilities and vehicles necessary to achieve program accessibility.

It is important to note that light rail vehicles stop not only at fixed-facility station, but also at street stops. We intend the key station criteria to apply only to fixed-facility stations. Street stops need not be considered as key stations, because these stops will be accessible in many cases, when lift-equipped vehicles are deployed. Street stops do not need to be changed structurally under this section. However, once light rail vehicles are equipped with lifts, it is likely that wheelchair users will be able to enter and leave the vehicles at many street stops.

The vehicle accessibility requirement for light rail is similar to that for buses. All vehicles must be accessible to handicapped persons who can use steps. At least half of the vehicles in peak-hour service must be accessible to wheelchair users.

During off-peak hours, the accessible vehicles must be used before inaccessible vehicles can be used. The discussion of the rationale for the bus accessibility requirement applies to the light rail vehicle accessibility requirement of this section. New light rail vehicles for which solicitations are issued on or after January 1, 1983, must be accessible to handicapped persons, including wheelchair users.

The final requirement of the section is that after 12 years, light rail operators must submit to the Department a report on the progress, cost and benefits of the accessibility program. As with rapid and commuter rail systems, operators are expected to make steady and reasonable progress throughout the 20-year program period toward the goal of program accessibility, with the most essential work being done first. However, until the Department's study of light and commuter rail accessibility, as mandated by section 321(b) of the Surface Transportation Assistance Act of 1978, is completed, we foresee no need for movement beyond the planning phase. Section 321(b) directs the Secretary to make an evaluation of the light and commuter rail modes to determine ways of making and the desirability of making such modes accessible to handicapped persons. The Secretary is directed to report to Congress the results of this evaluation by January 30, 1980, together with his recommendations for legislation necessary to clarify or change Federal laws or provisions pertaining to light and commuter rail accessibility.

The Department estimates that the capital cost of making light rail systems accessible would be about $47.7 million if all stations were made accessible. If the key station criteria result instead in forty percent of stations being made accessible, the capital cost would be reduced to about $25 million.

As a number of commenters pointed out, the biggest problem in making light rail systems accessible is the present unavailability of lifts for light rail vehicles. UMTA has initiated research to assist in developing a lift for light rail vehicles. Based on present development schedules, the Department expects a prototype lift for light rail vehicles to be developed by the end of 1980. It is probable that another year will be required before a safe and reliable lift can be marketed. It is with this development timetable in mind that the Department does not require recipients to order only new vehicles that are accessible until January 1, 1983. This schedule gives reasonable leeway for development and testing before transit systems must order trolleys with lifts or other accessibility features.

Comment from groups representing handicapped persons favored the accessibility mandate for light rail systems; transit operators, while pointing out problems associated with lift costs, in several cases did not appear to oppose accessibility. Only one comment, which favored the idea, dealt with the key station concept. Some transportation agencies requested that accessibility be a matter of complete local option but, for the same reasons discussed in connection with buses and rapid and commuter rail systems, the Department did not adopt this suggestion.

It should be pointed out that in light rail cities which also have bus systems, it is likely that the bus systems, once they are accessible and given proper routing, should in most cases be able to meet interim accessible transportation requirements until the light rail system becomes accessible.

§ 27.91 Paratransit Systems. (Section 27.105 in the NPRM). This section requires that where paratransit systems exist, they shall be operated so as to be accessible, when viewed in their entirety. Where new vehicles must be purchased or structural changes made to attain program accessibility, the purchases or changes must be made within three years from the effective date of the regulation. Automobiles may be used by transit operators or other service providers as one form of paratransit vehicle. They are accessible to many handicapped persons, including many wheelchair users. However, automobiles are not accessible to some handicapped persons (for example, persons who use battery-powered wheelchairs that cannot be folded and carried in an automobile trunk or backseat). Thus, the section requires that each paratransit system operate enough accessible paratransit vehicles to provide approximately the same measure of service to handicapped persons who need such vehicles as is provided to other persons. A higher fare may not be charged just because the handicapped person needs a vehicle with a level-change mechanism.

In paragraph (b), the requirement concerning the purchase of new vehicles has been altered somewhat from the NPRM. New vehicles purchased after the effective date of the regulation must be accessible, unless the system will continue to meet the section's general program accessibility standard even though the new vehicle or vehicles purchased are not accessible. For example, if a paratransit system has enough accessible vehicles to meet all demands for service by handicapped persons, and the requirement of generally equal service to handicapped riders is met, all new vehicles purchased for the system need not be accessible.

No part of these regulations is intended to discourage door-to-door paratransit services or programs that help handicapped travelers directly through user subsidies or other methods.

Our intent is to increase overall travel opportunities of handicapped persons by fostering program accessibility in addition to any current or planned specialized services available from a variety of sources. Recipients are encouraged but not required to provide supplemental service to handicapped persons who cannot reach transit facilities, use accessible vehicles, or travel from transit stops to their destinations.

The Department received a great many comments dealing with paratransit as a supplement or alternative to mainline accessibility for handicapped persons. The NPRM, however, did not propose anything with respect to paratransit except that paratransit systems, where they exist, must be accessible. This provision of the NPRM has been retained. Under this section of the final rule, no one is required to provide paratransit service. The cost of making the paratransit service that is provided fully accessible should not be overwhelming, given that much paratransit service is already aimed at serving handicapped persons.

Some commenters suggested the inclusion of specific varieties of paratransit service (e.g., taxis) in the definition of paratransit (which has been moved to the general definitions section, § 27.5). If, through arrangements with taxi operators, recipients are providing paratransit services by taxi, then taxis are included under this section, and the system must achieve program accessibility. Specific schemes for providing paratransit, such as transit agency subsidies of taxi fares, are not mandated by this regulation.

§ 27.93 Systems Not Covered by §§ 27.85–27.91 (Section 27.107 of the NPRM). The substance of this provision has been changed slightly from the NPRM. The Administrator's authority has been clarified to indicate that it relates to the program accessibility requirements of this section. In addition, some service quality criteria for alternative service under subparagraph (b) have been added to ensure that it will be useful to handicapped persons.

There were a variety of comments on this section. One commenter suggested that "trackless trolleys" (e.g., electric buses using overhead wire power sources) be considered as buses rather than dealt with under this section. It is unnecessary to include trackless trolleys explicitly under the bus section. Accessibility requirements for these vehicles, which share many of the characteristics of buses and some of the characteristics of light rail vehicles, are best able to be handled under this section, which gives the UMTA Administrator the flexibility to tailor the timing of program accessibility to the requirements of the vehicles. Trackless trolleys are a relatively rare kind of vehicle in this country; it is better to deal with them through the Administrator's discretion under this section than to attempt to fit them into a section covering another kind of vehicle.

Some commenters asked for more specific treatment of the requirements for ferry boat accessibility. Like trackless trolleys, ferries make up a rather small portion of recipients' transit programs. Under these circumstances, it was not thought advisable to prescribe specific requirements for ferries in this regulation. The general requirement of accessibility and the UMTA Administrator's discretion in applying timing requirement are suitable to the task.

§ 27.95 Program Policies and Practices. (Section 27.99 in the NPRM). The purpose of this section is to identify, for the use of recipients and other organizations involved in transportation planning, key areas of concern affecting the provision of services to handicapped persons. This section reflects the concept that public transportation services require more than facility and vehicle accessibility if they are to be predictably, conveniently, and safely used by handicapped travelers. This section is not intended to prescribe detailed requirements for the results of the planning process. It would be inadvisable for DOT to attempt to formulate uniform, national requirements in each of these program areas. The local planning process should have the flexibility to work out solutions that are consistent with local problems and conditions. At the same time, the identified program areas are important enough everywhere that the Department wants all recipients to deal with them in the planning process.

The activities required by this section are the responsibility of each recipient providing transportation service. Many related activities should be coordinated and conducted jointly by several recipients, MPO's, State, or other institutions. Recipients which have not already done so must start to modify their barrier-related policies and practices on the effective date of this rule. Most changes are expected to be completed while the transition plan is being prepared, as provided in § 27.11 of this part, but three years are provided because of the extent of the possible changes that recipients may identify.

Paragraph (a) has been rewritten to say that program policies and practices that prevent systems from achieving program accessibility must be modified as soon as possible but no later than three years after the effective date of this part. This three-year period prevails over the one-year period of § 27.11(c)(2) with respect to mass transit systems.

Several policy and practice reforms merit illustration to make the meaning clear. Supplemental guidance will be issued later by UMTA, as needed.

Item 1. Safety and emergency policies and procedures should cover the routine transporting of persons with differing disabilities, so that the passengers' safety will be assured.

Item 4. Intermodal coordination should be effectively established among multiple services offered by a single recipient, between each recipient and other transit and paratransit providers, and between recipients and other transportation institutions and modes (e.g., Amtrak, highway departments).

Item 5. Coordination with agencies and institutions that provide or support transportation services on behalf of the disabled should assure effective integration of their facility locations, operations, and transportation services.

Item 6. Comprehensive marketing should be integrated with the required preparation and implementation of the transition plan. Marketing should at least provide public information about accessible transportation services.

Several specific marketing activities should be conducted and described in the transition plan, such as:

(a) An assessment of each operating recipient's management organization and resources to assure effective marketing;

(b) Examinations of the feasibility of concepts such as a local transit broker, or subsidies to users;

(c) Periodic publication of reports (at the regional or State level) describing accessible facilities and services (e.g., housing, education, commerce) and existing and planned accessible transportation services; and

(d) Establishment of mail or telephone systems that provide disabled persons with effectively the same or better information service, ticket purchase service, or other services available to the general public (e.g., TTY for hearing-impaired persons).

Item 7. New or renewed leases and rental agreements for facilities or vehicles should be restricted to vehicles and facilities the use of which is consistent with program accessibility.

Item 8. Recipients should provide for participation of existing private and public operators and public paratransit service providers to assure maximum

feasible opportunities to provide the desired services. Recipients, MPO's, and/or State or regional agencies should seek assistance in their planning from existing public and private operators. Recipients, MPO's, States, or regional agencies should maintain current inventories of existing transit or paratransit providers to assist them in their planning and to be considered in providing the services. The plan for implementing these objectives should be included in the transition plan.

Item 9. Reforms to permit and encourage accessible services should include, but not be limited to, actions which remove or modify unnecessary or inappropriate restrictions on types of taxicab service, insurance coverage, or entry-exit requirements on the providers of accessible transportation services.

The approximately 100 comments discussing this section generally favored its provisions. The bulk of these comments spoke to the 13 specific provisions of paragraph (b), suggesting that DOT mandate various specific requirements under the items. For example, some commenters asked DOT, under subparagraph (b)(2), to establish minimum standards for training of recipient personnel. DOT believes that these 13 areas are subjects of concern for the local planning process concerning which the Department's commitment to encouraging flexibility in local planning is best served by avoiding uniform nationwide standards.

Some commenters said that the section should specifically assign certain of the planning tasks to recipients, MPO's, and States, respectively, since many of the tasks seemed to fall into program areas traditionally handled by each of these entities. The Department, however, prefers to encourage flexibility in the planning process. We believe that, in each area, the various parties themselves should divide the labor as best they see fit. This approach is more satisfactory, in our view, than a uniform, national delegation of functions by DOT to different planning bodies.

Other commenters criticized the section for raising problems without suggesting how to solve them. As mentioned above, DOT believes that in order to deal with planning concerns in the context of the many and varied local conditions affecting the provision of services required by this rule, local and regional planning agencies are best served by having more discretion in the planning process.

§ 27.97. *Interim Accessible Transportation* (Section 27.109 in the NPRM). This section has been changed and expanded significantly from the NPRM. The key requirement of the section is that no later than three years after the effective date of the rule, each recipient whose system has not achieved program accessibility shall provide or ensure the provision of interim accessible transportation for handicapped persons who could otherwise use the system if it were accessible. This interim transportation must continue to be provided until program accessibility is achieved.

The standards for interim accessible transportation are to be developed by the recipient in cooperation with the advisory group of representatives of handicapped persons and must be set forth in the recipient's transition plan. The advisory group should be carefully selected to be representative of the local community of handicapped persons. Subject to the funding level available under this section, which was set up to enhance the funds available for permanent accessibility, the interim accessible transportation service must be available within the recipient's normal service area and during normal service hours. To the extent feasible, the service should also be unrestricted as to trip purpose and be comparable to the recipient's mainline service with respect to combined wait and travel time, transfer frequency, and fares. The service must, to the extent feasible, be available to all handicapped persons, including those who cannot transfer from a wheelchair and those who use powered wheelchairs; waiting lists that would consistently exclude handicapped persons who have qualified or registered for the service should not exist.

The standards for interim service derive generally from illustrations of interim accessible transportation contained in Appendix A of the NPRM. Within these general standards, the precise standards for service are required to be developed by the recipient in cooperation with the local advisory group composed of representatives of local handicapped persons and their groups.

In order to ensure an adequate level of financial support for this service, a recipient must spend each year an amount equal to two percent of the financial assistance it receives under section 5 of the Urban Mass Transportation Act of 1964, as amended. If the recipient does not receive section 5 funds, then it must spend two percent of the mass transportation assistance it does receive from the Department. The Department will periodically assess the two percent requirement in light of experience to see if it is adequate to meet the criteria for interim service. Additionally, a recipient may spend a lower amount during any year when UMTA finds that the local advisory committee of representatives of the handicapped established to work with the recipient on interim accessible transportation matters has agreed that the service provided at the lower expenditure is adequate. Expenditures to meet the two percent requirement are in addition to expenditures to make the recipient's fixed route bus system or rail system accessible.

Until these requirements are met, the annual element of the urbanized area's transportation improvement plan (TIP) must exhibit a reasonable level of effort in programming projects or project elements to benefit handicapped persons who cannot otherwise use the recipient's transportation system. Programming projects and project elements involving an expenditure equal to two percent of the urbanized area's section 5 funds (from either UMTA or other sources) will be considered a reasonable level of effort. Where it can be shown that other approaches are equally or more likely to lead to program accessibility and, where needed, to interim accessible transportation, these other approaches may also be acceptable.

In areas served by rail systems, the requirements of this section will be met if the bus system has achieved program accessibility and the bus system serves the inaccessible portions of the rail system.

The recipient, working with the MPO, is responsible for attempting to coordinate all available special services and programs in order to ensure the provision of service meeting the standards of this section. The regulation does not require the recipient to provide the required level of special services entirely on its own; the services it provides, together with the services provided by other organizations and coordinated by the recipient and the MPO, should be used in reaching the standards of this section.

In deciding what types of resources should be devoted to interim service, recipients may want to consider whether the most cost-effective approach may be to achieve program accessibility in their fixed route bus system as soon as possible.

The comments from handicapped persons, their groups, and some transit industry commenters were generally favorable with respect to the standards for interim service proposed in the Appendix to the NPRM. Consequently,

these standards were incorporated into the regulation itself, though without the stipulation, opposed by most handicapped people who commented, that recipients could make "tradeoffs" among them. The concerns of transit operators, who generally favored the "tradeoff" idea, should be lessened by the provision of the final rule that many of the standards must be met "to the extent feasible."

Some commenters favored adding additional criteria, such as equivalent comfort and amenity, but the Department felt that its set of criteria, together with the local standard setting process, would ensure that all local priorities for service were fully considered.

Transit agencies generally favored a requirement that a certain percentage of UMTA funds be spent for interim service, often as a substitute for specific service standards. Groups representing the handicapped generally opposed this idea, at least as a substitute for service standards. The regulation takes a middle ground position, establishing general standards for interim service but providing that the recipient must spend the equivalent of two percent of its section 5 funds for interim services, unless service meeting the locally set standards is provided through coordination from other sources and the local advisory group agrees that such expenditure is unnecessary. In the case of a major rapid rail system recipient which obtains a waiver of its accessibility requirements for wheelchair users, this two percent requirement is in adddition to the five percent of section 5 funds it must agree to spend on alternative accessible transportation in order to obtain the waiver. In such cases, this interim service should be coordinated with the service contemplated under the waiver; a major rapid rail recipient providing an alternative system under the waiver provision where that also meets the standards set for interim service would presumably not need to spend an additional two percent of its section 5 funds on such service. The two percent requirement continues in effect until the recipient's "substantially as good as or better than" alternative service is in place.

One of the most complex issues concerning interim accessible transportation is the problem of phasing out the interim service once program accessibility is achieved. Generally speaking, transit operators feared that because of Departmental action, investment in equipment, labor-management contracts, and local political pressures (including pressure from groups representing the handicapped), interim services, once begun, could not be easily terminated, resulting in a continuing costly and duplicative transportation system. Handicapped individuals and their groups, on the other hand, tended to fear that the provision of interim service would tend to slow down the provision of accessible mainline service and that the provision of accessible mainline service would mean the end of necessary special services, particularly for persons who would have difficulty getting to accessible mainline buses or rail vehicles.

The regulations do not require that special services initiated in or continued through the interim period be maintained after program accessibility is achieved, although the Department requires recipients to continue their coordination efforts and encourages recipients to continue to commit funds toward this service. Nor do the regulations permit recipients to delay the achievement of program accessibility because interim service is provided. Consequently, the Department does not think it necessary to impose, as some commenters requested, a special deadline for the termination of interim services. The Department recognizes that there are likely to be problems for both transit providers and consumers at the time when program accessibility is achieved. Foresight, good planning, and cooperation between transit operators and handicapped persons will be necessary to ensure that the transition from interim to accessible mainline services is smooth.

These problems are likely to emerge some years in the future, and their solutions are likely to vary greatly from area to area. Consequently, the Department believes that this rule should not attempt to propose specific solutions. For the same reason, the Department has not attempted to set forth detailed examples of "acceptable" approaches to interim accessible transportation, believing that it would be a mistake to attempt to prescribe finely-tuned solutions to the wide variety of local problems and conditions.

The costs of interim service received several comments. Because of the wide variety of possible kinds of interim service, the Department has not been able to come up with any overall estimates of interim service costs. In order to construct cost estimates, a number of assumptions about the kind and duration of service provided—assumptions that almost certainly would not hold true on a nationwide basis—would have to be built into the estimate. However, two percent of UMTA's available section 5 funds for the current fiscal year is about $28 million. This figure provides at least a rough idea of the annual level of expenditure that might be required.

§ 27.99 *Waiver for Existing Rapid, Light, and Commuter Rail Systems.* In order to establish regulations which are reasonable, flexible and responsive to local conditions, the Department has created an alternative to the accessibility requirements of §§ 27.87 and 27.89 for wheelchair users. A recipient that, on the effective date of this regulation, operates an existing inaccessible light rail, rapid rail, or commuter rail system may petition the Secretary for a waiver of its obligations under § 27.87 or § 27.89 with respect to making the existing system accessible to wheelchair users. A waiver provision contained in the NPRM (§ 27.111) has been deleted, and this waiver provision applicable to rapid, commuter and light rail has been added.

The conditions for granting a waiver request are stringent. A request may be submitted only after the MPO and handicapped persons and organizations representing handicapped persons in the community, through a consultative process, have developed arrangements for alternative service substantially as good as or better than that which would have been provided in the absence of a waiver. A public hearing at the local level is required. The recipient must submit a record of the consultative process, including the hearing transcript, to the Secretary. The recipient must also submit a completed transition plan for an accessible system. Only if there is an acceptable transition plan for an accessible system, of course, can the Secretary determine whether or not the proposed alternative service would be substantially as good as or better than accessible service. The Secretary must make this determination in order for a waiver to be granted.

The Department will review the consultative process used by the MPO for a waiver to determine whether there has been adequate participation by handicapped persons and organizations representing handicapped persons in the community. In this regard, the recipient should consider methods of fostering a more open, balanced consultative process at which a variety of viewpoints that might otherwise be unrepresented are presented. Among the methods used by the MPO might be the preparation or financing of technical analyses suggested by handicapped persons, or

making available funds to reimburse costs for handicapped persons or their representatives to participate effectively in the consultative process.

Certain recipients with existing inaccessible rapid rail systems—New York City Transit Authority, Chicago Transit Authority, Massachusetts Bay Transportation Authority, Greater Cleveland Regional Transit Authority, and Southeastern Pennsylvania Transportation Authority—are subject to an additional requirement if they are granted a waiver. They must agree to spend each year (or ensure that other UMTA recipients in the urbanized area spend) an amount equal to at least five percent of the urbanized area's capital and operating funds under section 5 of the Urban Mass Transportation Act of 1964, as amended, on the alternative service.

This five percent requirement is designed to guarantee an adequate minimum level of funding for alternative service in those cities with the largest inaccessible existing rapid rail systems. The cost of making these five systems accessible would be higher than in other systems and the cost of providing an alternative service substantially as good as or better than that which would have been provided in the absence of a waiver will probably be higher as well. It should be pointed out that the five percent figure is a floor, not a ceiling. It may be necessary for a recipient to spend more than the equivalent of five percent of its area's section 5 funds to meet the "substantially as good as or better than" standard for alternative service.

On the other hand, this requirement need not apply to relatively small rapid rail systems. It would be impractical to ask a smaller system to spend or ensure the expenditure of five percent of a large urbanized area's section 5 funds because a waiver has been granted. If a smaller system obtains a waiver, it still must make arrangements for alternative service substantially as good as or better than that which would have been provided had the system been made accessible.

The stringent requirements of this section ensure that only meritorious requests for waiver will be granted. It should be noted that the section requires that alternative services "will be" as good as or better than those which would have been provided by the waiver requirement. Recipients do not have to show that the alternative services, at the time the petition is submitted, are equivalent to the services that would have been provided when program accessibility for the rail system in question had been achieved. Rather, the recipient must demonstrate to the Secretary's satisfaction that within the period established for program accessibility, or a shorter time established by the Secretary in his or her reasonable discretion, the appropriate level of service will be established. The required alternative service may be provided by any mode or combination of modes, including accessible mainline buses and special service paratransit.

The Department will judge whether the alternative service is adequate by looking at how the service responds to certain criteria. With respect to the service area, the system must serve at least all stations of the rail system, and it must also be available during the same hours as the accessible system would be available. There must be no restrictions on trip purposes, and fares for the same station-to-station trip must be equivalent to those that would apply if the rail system waiver were not granted. Travel aids and companions of handicapped travelers must be accommodated. Combined wait and travel time, transfer frequency and availability of the service to all handicapped persons who would be served by an accessible system must be made equivalent to the maximum feasible extent, and any differences must be explained in writing in the transition plan. Recipients are strongly encouraged to provide service in a way that allows handicapped and non-handicapped passengers to ride together.

Concerning who must be served by the alternative service, our intention is that the service be available to at least those handicapped persons who would have used the rail system if it had been made accessible but who now will not be able to use that system because of the waiver. Recipients must adopt reasonable and carefully considered methods of estimating the demand for alternative service.

Recipients should begin to provide this alternative service at the earliest possible date, but in any event no later than the date on which accessible service could reasonably have been provided at any two key stations that presented no technological or other significant barriers to completion. The alternative service should show steady improvement in quality over time to reflect the increasingly improved service that would have been offered by an accessible system.

In requesting a waiver, recipients must identify and provide satisfactory evidence from operators and from local sources of funding that will ensure that the alternative service will in fact be available.

§ 27.101 Period After Program Accessibility.

This new section treats the question of recipients' obligations after they have achieved program accessibility in their systems. In addition to complying with other sections of this regulation, mass transit recipients must continue to use their best efforts to coordinate special services.

§ 27.103 Transition Plan. Section 27.89 in the NPRM). The mass transportation portion of this regulation requires the various modes of urban mass transit to be made accessible to handicapped persons over periods ranging from three to 30 years. In most respects, many systems are not now accessible. Careful planning will be required in order to "get from here to there" in an expeditious and orderly way. The purpose of this section is to provide a tool—the transition plan—which will be useful to recipients, planning agencies, and the public as they decide how to achieve program accessibility.

Several important features of this section should be noted. Only one transition plan in each urbanized or nonurbanized area receiving financial assistance for mass transit must be submitted. This plan will cover all modes in areas having more than one kind of mass transit service. The plan is developed once, and covers the entire period of time leading to program accessibility. However, the plan must be refined and reappraised periodically to ensure that it continues to provide adequately for transportation facilities and services that can be used effectively by handicapped persons. In urbanized areas, the Metropolitan Planning Organization (MPO) is principally responsible for preparing the transition plan, in cooperation with State and local officials and operators of publicly owned mass transportation services. In other areas, local elected officials, in cooperation with transit operators and the State, have this responsibility.

The transition plan for areas which have existing, inaccessible rapid rail systems are due to be submitted to the Urban Mass Transportation Administration (UMTA) 18 months after the effective date of this regulation. All other transition plans are due one year from the effective date of the regulation. However, urbanized areas with inaccessible rail systems other than rapid rail may extend the one-year period to 18 months, upon an adequate

showing of need. Transition plans will be reviewed expeditiously by UMTA and approved or disapproved. The longer period allowed for the submission of transition plans in areas with existing, inaccessible rapid rail systems reflects the greater complexity of the planning process concerning such systems.

The detailed contents of the transition plan are spelled out in paragraph (c) of this section. Generally speaking, the plan must relate which facilities and equipment have to be modified to achieve program accessibility in each transportation mode, what these modifications will be in each case, what schedule will be followed to make the changes, who will be responsible for carrying out the changes, how existing services will be coordinated to improve service to handicapped persons, how much the changes will cost and where the money will come from, how the planners have involved the community in developing the planned changes, and what the planners have to say in response to substantive concerns which arose in public hearings on the plan.

Some commenters said that the content requirements and apparent purposes of the transition plan and the annual status report overlapped. The final rule distinguishes between the purpose of the transition plan as a program for achieving accessibility and the status report as principally a progress report on compliance with the schedule defined in the transition plan.

Commenters, particularly from small cities, indicated that the level of detail in the transition plan should be flexible to account for substantial variations in the magnitude and complexity of local accessibility issues. This comment is acknowledged and resolved with the addition of the concept of "appropriate level of detail" in § 27.103(b)(3). The Department clearly recognizes that the transition plan in a bus-only city of 75,000 will be much less complicated than the plan in a major metropolitan area with several modes of public transportation and numerous and complex route structures.

A number of commenters, particularly from MPOs and transit operators, questioned the respective roles of the MPO and transit operator in developing the transition plan. The respective roles of the MPO and transit operator should be determined locally through the cooperative process (though the MPO has overall "direction" of the planning effort). There is one important difference between the normal planning process and the requirements of this regulation. Section 27.103(b)(5) mandates greater involvement of the recipients in the planning process than 23 CFR Part 450, UMTA's planning regulation.

In order to clarify the requirements of the transition plan, language had been added to § 27.103(c)(3) stating that the plan should document phasing criteria, indicate which projects or improvements are needed to meet the three-year requirements, and set appropriate benchmarks for longer-term efforts.

The largest number of commenters on the transition plan section of the NPRM addressed the deadline for submission of the plan (July 1, 1980, in the NPRM). Some commenters asked for shorter deadlines while others asked for more time. We believe that the one year or 18 month deadlines provide reasonable periods within which the local planning, decisionmaking and programming can be accomplished to produce an effective transition plan. We have also added the concept of periodic plan refinement (which is similar to that for the overall transportation planning process in 23 CFR Part 450) to allow for appropriate details to be added to the transition plan after the initial deadline (see § 27.103(d)(3)).

§ 27.105 Annual Status Report (Section 27.91 in the NPRM). This section requires the submission of information which will provide a basis for compliance determinations. Very few comments were received regarding this section. Most were supportive of the proposed section. Some, however, were concerned about the manner in which the status report would relate to the transition planning requirement of § 27.103, the compliance planning requirement of § 27.11(c)(2) and (3), and the annual element of the Transportation Improvement Program (TIP). The section has been revised to simplify and clarify the requirement for an annual status report. The principal requirement is to provide a summary of the recipient's accomplishments and activities for meeting the schedule of improvements in the area's approved transition plan.

The section also provides that the first annual transition plan shall include copies of the three compliance planning items listed in § 27.11(c)(3). Subsequent annual status reports must reflect any changes made as a result of the requirement of § 27.11(c)(2)(v) for reviewing and updating compliance planning periodically.

The compliance procedures described in Subpart F of this part provide the basic mechanism for ensuring compliance with the requirements of this part. Those procedures include on-site compliance reviews where appropriate. UMTA will also review compliance with this part as a basis for performing planning certifications (described in 23 CFR 450.122) and program approvals (described in 23 CFR 450.320). Failure to prepare and implement transition plans and to meet accessibility requirements of this part may result in program disapproval or disapproval of applications for UMTA capital or operating assistance.

UMTA will make an annual determination of compliance with this part either in conjunction with the certification and program reviews or as status reports are transmitted to UMTA. For nonurbanized areas, a similar determination will be made as part of the application review process. A determination of compliance will be based upon a determination of satisfactory progress toward implementing the requirements of this part, including the schedules and benchmarks specified in the transition plan. This determination will provide a basis for UMTA to certify the planning process and approve projects contained in the annual element of the transportation improvement program.

§ 27.107 Community Participation. (Section 27.93 in the NPRM). This section of the NPRM has been changed in a few minor respects. Its effective implementation will depend upon the good faith actions of the parties concerned and the Department's monitoring activities. The section has been revised to include subheadings, to emphasize that the participation mechanisms shall ensure a continuing consultation process (as is emphasized in other sections of this part, e.g., compliance planning, § 27.11(c)), to indicate the need for adequate notice before a required hearing, and to emphasize that it specifically applies only to recipients whose systems are covered by Subpart E.

The intent of § 27.107 is to ensure significant involvement of those most concerned and knowledgeable about accessible transportation in the planning and implementation of such transportation. Efforts should include as many diverse interests as possible in order to assure obtaining all the information necessary to develop a viable, accessible system. The regulation lists the interests whose participation must be sought.

While as much use as possible should be made of the area's already established community participation procedures, the special nature of the accessibility programs requires a special, identifiable effort in community participation. Due to the mobility

problems of the transportation handicapped, special mechanisms may have to be developed to ensure the involvement of future consumers of the accessible services. Such mechanisms could include conference call meetings, providing special transportation to meetings, developing materials to be understood by the blind or the hard of hearing, or meetings and discussions via television with telephone responses. The section requires recipients to ensure participation by handicapped persons; this requirement, of course, can be met only when the recipient's public meetings, conferences and workshops are held in accessible buildings.

The U.S. Department of Transportation publication "Effective Citizen Participation in Transportation Planning" (1976) (DOT-FH-11-8514) and the booklet "Barrier Free Meetings: A Guide for Professional Associations" (American Association for the Advancement of Science, 1515 Massachusetts Avenue, N.W., Washington, D.C. 20005) are useful resources which agencies responsible for planning and implementation activities may wish to consult.

Many comments were received concerning this section. They were generally supportive of the section. The majority, however, suggested language to be added to assure effective participation of and consultation with handicapped persons and groups. Many commenters raised a concern regarding the term "adequate" in connection with citizen participation procedures, which was perceived as being vague and indefinite. In the context of the explanations to planners provided by this preamble, we believe this general term is sufficient and that it will not lead to abuse.

Subpart F—Enforcement

This subpart sets forth the procedures by which the Department of Transportation will enforce the requirements of the other subparts of the regulation. The enforcement procedures are closely modeled on the Department's enforcement procedures for Title VI of the Civil Rights Act of 1964, as § 85.5 of the HEW guidelines requires. While some details of the enforcement procedures of the final rule differ from those of 49 CFR Part 21, the Department's Title VI regulation, the substance of the section 504 enforcement procedures is essentially the same as that of the Title VI rule.

One change has been made throughout the regulation. The NPRM vested compliance functions in the Director of the Office of Environment and Safety. After further study, the Department has concluded that some of these functions, particularly concerning the handling of complaints, should be vested in the Director of the Office of Civil Rights. The Office of Civil Rights handles complaints under Title VI of the Civil Rights Act of 1964 and has considerable experience in investigating and responding to complaints. Delegation of the complaint function and other enforcement functions will be made by the Secretary in an internal directive. Reflecting this future change in the Department's assignment of enforcement functions, the rule now refers to "the responsible Departmental official" rather than to any specific official.

§ *27.121 Compliance Information.* This section requires recipients to cooperate with and assist the responsible Departmental official in compliance matters, to keep records and submit compliance reports to the official, to permit the official access to information relevant to compliance, and make information about the Department's section 504 program available to the public. It is unchanged from the NPRM. Several commenters suggested that the recordkeeping and paperwork burdens of this section were excessive. Other commenters felt that not only information about the Department's section 504 program, but also the recipients' records, should be required to be made available to the public.

The recordkeeping and reporting requirements of this section are virtually identical to those imposed on recipients by Part 21. The experience of the Department and recipients under Title VI suggests that requirements of this nature are reasonable. With respect to the public availability of information, we do not believe it is necessary to require public access to recipients' records. The performance of recipients in carrying out the most important requirements of the rule—providing accessible buses or elevators in rail stations, for example—is fully open to view. Other provisions of the rule, such as those concerning transition plans and requests for waiver, include public hearing and consultation requirements. Potential complainants are not likely to need extensive additional documentary information before filing a complaint. All relevant documentary information will become part of the record in any complaint proceeding, ensuring that it will be properly considered.

§ *27.123 Conduct of Investigations.* With one exception, this section is unchanged from the NPRM. The change is the addition of language providing that the responsible Departmental official will begin the enforcement process if he or she finds "reasonable cause to believe" that there is a failure to comply. This language was added to remove the possibility of confusion over the nature of the official's finding at this stage of the procedures. Experience in the Title VI program has shown that recipients frequently misunderstand letters stating that the Departmental Office of Civil Rights has determined that they are in noncompliance, incorrectly believing that a final determination has been made. This stage of the procedure is akin to a "probable cause" finding, and the additional language is intended to clarify this fact.

The statement in paragraph (d) that "the matter is resolved by informal means whenever possible" is particularly important. This regulation is compliance-oriented. When there is a failure to comply, the Department plans to work with the recipient to bring it into compliance. The conciliation process is the focus of this compliance effort. The Department fully supports the concept, expressed elsewhere in this subpart, that resort to administrative or other sanctions is warranted only when compliance cannot be secured by voluntary means.

Several commenters suggested that persons or groups outside the Department, such as local groups of handicapped persons, local governments, or the Architectural and Transportation Barriers Compliance Board, should have partial or total responsibility for conducting compliance reviews and complaint investigations. The Department believes that while all of these and other groups can play an important, informal role to ensure that recipients comply and to bring to the Department's attention any failures to comply, it is preferable to leave the official compliance review and complaint investigation functions in the Department.

One commenter asked for specific provision for pre-award reviews. The section 504 compliance status will be taken into consideration by operating elements of the Department when recipients apply for grants. In many of the Department's grant programs, recipients must satisfy the Department that they are in compliance before grants (e.g. UMTA grants for capital or operating expenses) are awarded. Under these circumstances, mandatory pre-award reviews are unnecessary. Nothing in the regulation prohibits pre-award reviews, however, and they may

scheduled when the Department notifies them to be useful.

One commenter suggested broadening the section's prohibition on retaliation and intimidation to cover retaliation for complaints filed under other laws governing discrimination because of handicap. We believe that it is unwise to attempt to extend the jurisdiction of the Department's section 504 rules to cover violations of other authorities.

§ 27.125 Compliance Procedure. This section's administrative sanction procedure, as set forth in the NPRM, is changed in three ways. Subparagraph (b)(1)(ii) has been changed to specify that the express finding on the record of noncompliance is to be made by the Secretary. Subparagraph (b)(1)(iii), which required the Secretary to approve fund cutoff actions, has been eliminated in view of the change to subparagraph (b)(1)(ii), which assigns to the Secretary the responsibility of taking these actions in the first place. The procedure is otherwise the same as in the NPRM.

Two commenters expressed the concern that a mechanism for ensuring speedy treatment of complaints, such as a deadline for resolving complaints or a provision for a private right of court action after a certain amount of time has passed, should be included in this section. Given the emphasis which the regulation and Department of Transportation policy places on resolving noncompliance informally, measures which have the effect of forcing the Department and recipients into a confrontation over the imposition of sanctions before the possibilities of a negotiated agreement have been exhausted appear inappropriate. For this reason, we did not adopt these comments.

Another commenter asked that this section be brought closer to Title VI procedures by involving the Secretary more directly in compliance decisions and by requiring a report to Congress similar to that provided for in Title VI matters by 49 CFR 21.13(c). The first of these comments has been adopted, and the Secretary is charged with the responsibility of making the on-the-record noncompliance finding necessary for the termination of Federal funds. The legislative report requirement, however, is present in the Title VI regulations because of a statutory requirement (42 U.S.C. 2000d–1) which has no equivalent in section 504. Therefore, it is not necessary to include this requirement in the section 504 regulation.

§ 27.127 Hearings. There were four changes to this section. The first change involves the complainant who, under the NPRM, was made a party to the proceedings. This provision was inconsistent with Title VI procedures, in which only the Department and the applicant or recipient are parties to the informal resolution and hearing processes. In order to be consistent with Title VI procedures, and to avoid the possibility of unwieldly three-party negotiations and hearings, the complainant has been deleted as a party. The complainant will have the opportunity, as complainants presently have under Title VI, of presenting information and views to the responsible Departmental official.

The second change involved adding language to subparagraph (a)(2) to specify the procedure to be followed in cases in which an applicant or recipient has waived its right to a hearing. When the hearing is waived, the responsible Departmental official and the applicant or recipient may also place information and arguments into the record.

The other two changes were the substitution of "responsible Departmental official" for the word "Department" in paragraphs (c) and (d). This change is intended to clarify the roles of actors in the hearing process. The responsible Departmental official, as with the applicant or recipient, appears as a party in the hearing. The official's role should be distinguished from that of the "Department" which, through the decision of the Secretary, will take action on the basis of the record developed at the hearing.

Relatively few comments were made on this section. One commenter asked that the convenience of the complainant be considered in determining the location of hearings. This factor will be taken into consideration, although it need not be made part of the regulation. Another commenter suggested that the complainant and its witnesses be reimbursed for travel and expenses. Since the complainant will not be a party to the hearing, this suggestion was not adopted.

§ 27.129 Decisions and Notices. The Department has revised this section in the interests of clarity and better administrative procedure. There are two principal changes. First, administrative due process is best served where the enforcement and decision-making functions of an agency are clearly separated. Therefore, the responsible Departmental official's role is delineated as enforcement. The official initiates enforcement proceedings and participates as a party in the proceedings. The authority to decide whether to find noncompliance and impose administrative sanctions is reserved to the Secretary. This reservation of authority prevents any confusion between the "prosecutor" and "judge" roles in this type of proceeding. Moreover, it is highly likely that any matters that are unable to be settled informally will be sufficiently important and controversial to merit direct decision by the Secretary.

Second, the NPRM permitted alternative administrative procedures to be employed. Once a hearing was convened and an administrative law judge selected, the judge could either make what is called an "initial" decision (which becomes final upon approval by the Secretary unless a party raises exceptions to it) or make what is called a "proposed" or "recommended" decision (which is a non-binding recommendation to the decisionmaker upon which the parties may comment). Each of these paths for decision contained differing procedural details. To simplify this structure, the final rule provides that the administrative law judge makes a recommended decision, upon which the responsible Departmental official and applicant or recipient may comment, and that the Secretary makes the final decision. We are considering including a similar simplification in the Department's Title VI procedures, which are currently being revised by the Department.

As a result of these alterations, paragraphs (a) and (c) have been shortened by omitting references to the "initial decision" procedure. Paragraphs (b), (d) and (e) have been rewritten to provide for decisions by the Secretary, rather than by the responsible Departmental official. Paragraph (e), which provided for approval by the Secretary of decisions by the official, is no longer needed and has been deleted.

The "subsequent proceedings" provision (paragraph (f) in the final rule) has been changed in response to several public comments. One comment recommended that the rule provide procedures to govern post-termination hearings; the rule now provides that the hearing procedures of §§ 27.127 and 27.129, with certain exceptions, apply to these hearings. Another comment noted that the NPRM, in contrast with the Title VI regulations, said that sanctions "may" rather than "shall" remain in effect while a post-termination proceeding is pending. The rule now says "shall". In addition, consistent with the clarification of the role of the Secretary, the necessity of the Secretary's approval of the restoration of funding is stated explicitly in subparagraphs (1) and (2).

In consideration of the foregoing, a new Part 27 of Title 49 is added to the Code of Federal Regulations, as set forth below.

Issued in Washington, D.C. on May 25, 1979.

Brock Adams,

Secretary of Transportation.

Appendix

Correspondence Supporting Compliance With Section 85.4(b) of the HEW Guidelines

In accordance with Section 85.4(b) of the Guidelines issued by the Department of Health, Education, and Welfare (HEW) for the implementation of Section 504 of the Rehabilitation Act of 1973, as amended, the Department of Transportation (DOT) submitted a proposed final rule with respect to Section 504 to HEW on April 2, 1979. On May 24, 1979, the Secretary of HEW advised the DOT that the DOT Section 504 final rule "complies with the HEW standards and guidelines." The April 2nd and May 24th letters are set forth below.

The Secretary of Transportation,
Washington, D.C., April 2, 1979.

Hon. Joseph A. Califano, Jr.,
Secretary of Health, Education, and Welfare, Washington, D.C.

Dear Joe: I am forwarding to you the Department of Transportation's proposed final regulations to implement Section 504 of the Rehabilitation Act of 1973. Following your review under Section 85.4(b) of your Department's Guidelines, I will publish the final DOT regulations in the **Federal Register.**

As you know from our discussions, this document represents the culmination of an extensive public comment period and a thorough review by my staff and myself. I believe the program in these regulations will provide effective transportation service for handicapped persons in conformity with the HEW Guidelines. The program also gives local officials and citizens an important role in shaping the local response to the regulations, within the context of Federal standards that ensure that the handicapped will benefit from significantly improved service.

I firmly believe the program is a reasonable and cost-effective approach to the implementation of Section 504 for the nation's transportation systems.

Sincerely,

Brock Adams.

Enclosure

The Secretary of Health, Education, and Welfare,
Washington, D.C., May 24, 1979.

Hon. Brock Adams,
Secretary of Transportation, Washington, D.C.

Dear Brock: I have reviewed your proposed final regulation implementing section 504 of the Rehabilitation Act of 1973. You had submitted your regulations to me on April 3, 1979, pursuant to my responsibilities under Executive Order 11914.

For the past five weeks, representatives of our Departments have discussed the difficult and complex issues raised by your regulation. I appreciate the cooperation that your Department has shown in meeting with HEW officials. Based on these discussions, a number of changes in the regulation you sent on April 3, 1979, have been agreed upon. With these changes, I now find that your Section 504 regulation complies with the HEW standards and guidelines implementing the Executive Order. Your regulation effectively resolves the unique and complex problems involved in making transportation systems in this country accessible to handicapped persons.

Once again, I congratulate you and your staff for the development of an equitable and reasonable Section 504 regulation. I believe this regulation will ensure that handicapped people in the United States will be able to use the nation's public transportation systems.

Sincerely,

Joseph A. Califano, Jr.

PART 27—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITTING FROM FEDERAL FINANCIAL ASSISTANCE

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AUTHORITY: Sec. 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; section 16(a) of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1612(a); section 165(b) of the Federal-Aid Highway Act of 1973, as amended, 23 U.S.C. 142 nt.

Subpart A—General

§ 27.1 Purpose.

The purpose of this part is to carry out the intent of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) as amended, to the end that no otherwise qualified handicapped individual in the United States shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

§ 27.3 Applicability.

This part applies to each recipient of Federal financial assistance from the Department of Transportation and to each program or activity that receives or benefits from such assistance.

§ 27.5 Definitions.

As used in this part:

"Accessible" means (a) with respect to new facilities, (1) conforming to the minimum standards of the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the

Physically Handicapped," (ANSI A 117.1—1961 (R 1971) published by ANSI, Inc. ("ANSI Standards"),* with respect to buildings and other fixed facilities to which ANSI standards are applicable; and (2) with respect to vehicles, other moving conveyances, or fixed facilities to which the ANSI standards do not apply, able to be entered and used by a handicapped person; (b) with respect to existing facilities, able to be entered and used by a handicapped person.

"Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended.

"Air Carrier Airport" means an airport serviced by a certificated air carrier unless such airport is served solely by an air carrier which provides: (1) passenger service at that airport in aircraft having a maximum passenger capacity of less than 56 passengers, or (2) cargo service in air transportation at that airport solely with aircraft having a maximum payload capacity of less than 18,000 pounds; provided, however, that if at any such airport, Federal funds are made available for terminal facilities, it shall be deemed to be an air carrier airport.

"Applicant" means one who submits an application, request, or plan to be approved by a Departmental official or by a primary recipient as a condition to eligibility for Federal financial assistance, and "application" means such an application, request, or plan.

"Closed station" means a station at which no services are provided to passengers by station attendants and at which trains make regularly scheduled stops.

"Commuter rail" means that portion of mainline railroad transportation operations which encompasses urban passenger train service for local short-distance travel between a central city and adjacent suburbs and which is characterized by multi-trip tickets, specific station-to-station fares, railroad employment practices, and usually only one or two stations in the central business district.

"Department" means the Department of Transportation.

"Discrimination" means denying handicapped persons the opportunity to participate in or benefit from any program or activity receiving Federal financial assistance.

"Facility" means all or any portion of buildings, structures, vehicles, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

"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 Department provides or otherwise makes available assistance in the form of:

(a) Funds;

(b) Services of Federal personnel; or

(c) Real or personal property or any interest in, or use of such property, including:

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

(2) 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.

"Fixed route bus system" means a system of buses of any size which operate on a fixed route pattern on a fixed schedule.

"Flag stop" means any station which is not a regularly scheduled stop but at which trains will stop to entrain or detrain passengers only on signal or advance notice.

"Handicapped person" means (1) any person who (a) has a physical or mental impairment that substantially limits one or more major life activities, (b) has a record of such an impairment, or (c) is regarded as having such an impairment. (2) As used in this definition, the phrase:

(a) "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 or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; mental retardation; emotional illness; drug addiction; and alcoholism.

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

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

(d) "Is regarded as having an impairment" means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;

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

(3) Has none of the impairments set forth in paragraph (1) of this definition, but is treated by a recipient as having such an impairment.

"Head of Operating Administration" means the head of an operating administration within the Department (United States Coast Guard, Federal Highway Administration, Federal Aviation Administration, Federal Railroad Administration, National Highway Traffic Safety Administration, Urban Mass Transportation Administration, and Research and Special Programs Administration) providing Federal financial assistance to the recipient.

"Light rail" means a streetcar-type transit vehicle railway operated on city streets, semi-private rights-of-way, or exclusive private rights-of-way.

"Mass transportation" or "public transportation" means transportation by bus, or rail, or other conveyance, either publicly or privately owned, which provides to the public general or special service (but not including school buses or charter or sightseeing service) on a regular and continuing basis.

"Open station" means a station at which passengers may make reservations and purchase tickets and where passenger assistance is available for entraining and detraining passengers on trains which make regularly scheduled stops.

"Passenger" means anyone, except a working crew member, who travels on a vehicle the service of which is governed by these regulations.

"Primary recipient" means any recipient that is authorized or required to extend Federal financial assistance from the Department to another recipient for the purpose of carrying out a program.

"Public paratransit system" means those forms of collective passenger transportation which provide shared-ride service to the general public or special categories of users on a regular and predictable basis and which do not necessarily operate on fixed schedules or over prescribed routes.

"Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who, with

*Copies available from ANSI, Inc., 1430 Broadway, New York, N Y 10018.

reasonable accommodation and within normal safety requirements, can perform the essential functions of the job in question, but the term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such person from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others; and

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

"Rapid rail" means a subway-type transit vehicle railway operated on exclusive private rights-of-way with high-level platform stations.

"Recipient" means any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, organization, or other entity, or any individual in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance from the Department is extended directly or through another recipient, for any Federal program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

"Secretary" means the Secretary of Transportation.

"Section 504" means section 504 of the Act.

"Transportation improvement program" means a staged multiyear program of transportation improvements including an annual element.

"Urbanized area" means an area so designated by the Bureau of Census, within boundaries which shall be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary, and which shall at a minimum, in case of any such area, encompass the entire urbanized area within a State as designated by the Bureau of Census.

§ 27.7 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance administered by the Department of Transportation.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

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

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

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as persons who are not handicapped;

(iv) 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 persons who are not handicapped;

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

(vi) Deny a qualified handicapped person the opportunity to participate in conferences, in planning or advising recipients, applicants or would-be applicants, or

(vii) 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.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting that is reasonably achievable.

(3) Even if separate or different programs or activities are available to handicapped persons, a recipient may not deny a qualified handicapped person the opportunity to participate in the programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially reducing the likelihood that handicapped persons can benefit by the objectives of the recipient's program, or (iii) that yield or perpetuate discrimination against another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant or a recipient may not make selections (i) 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 (ii) 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.

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

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

(d) *Programs limited by Federal law.* In programs authorized by Fedeal statute or executive order that are designed especially for the handicapped or for a particular class of handicapped perons, the exclusion of nonhandicapped or other classes of handicapped persons is not prohibited by this part.

27.9 Assurance required.

(a) *General.* Each application for Federal financial assistance to carry out a program to which this part applies, and each application to provide a facility, shall, as a condition to approval or extension of any Federal financial assistance pursuant to the application, contain, or be accompanied by, written assurance that the program will be conducted or the facility operated in compliance with all the requirements imposed by or pursuant to this part. An applicant may incorporate these

assurances by reference in subsequent applications to the Department.

(b) *Future Effect of Assurances.* Recipients of Federal financial assistance, and transferees of property obtained by a recipient with the participation of Federal financial assistance, are bound by the recipient's assurance under the following circumstances:

(1) When Federal financial assistance is provided in the form of a conveyance of real property or an interest in real property from the Department of Transportation to a recipient, the instrument of conveyance shall include a convenant running with the land binding the recipient and subsequent transferees to comply with the requirements of this part for so long as the property is used for the purpose for which the Federal financial assistance was provided or for a similar purpose.

(2) When Federal financial assistance is used by a recipient to purchase or improve real property, the assurance provided by the recipient shall obligate the recipient to comply with the requirements of this part and require any subsequent transferee of the property, who is using the property for the purpose for which the Federal financial assistance was provided, to agree in writing to comply with the requirements of this part. The obligations of the recipient and transferees under this part shall continue in effect for as long as the property is used for the purpose for which Federal financial assistance was provided or for a similar purpose.

(3) When Federal financial assistance is provided to the recipient in the form of, or is used by the recipient to obtain, personal property, the assurance provided by the recipient shall obligate the recipient to comply with the requirements of this part for the period it retains ownership or possession of the property or the property is used by a transferee for purposes directly related to the operations of the recipient.

(4) When Federal financial assistance is used by a recipient for purposes other than to obtain property, the assurance provided shall obligate the recipient to comply with the requirements of this part for the period during which the Federal financial assistance is extended to the program.

§ 27.11 Remedial action, voluntary action and compliance planning.

(a) *Remedial action.* (1) If the responsible Departmental official finds that a qualified handicapped person has been excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under, any program or activity in violation of this part, the recipient shall take such remedial action as the responsible Departmental official deems necessary to overcome the effects of the violation.

(2) Where a recipient is found to have violated this part, and where another recipient exercises control over the recipient that has violated this part, the responsible Departmental official, where appropriate, may require either or both recipients to take remedial action.

(3) The responsible Departmental official may, where necessary to overcome the effects of a violation of this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred, and (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to assure the full participation in the recipient's program or activity by qualified handicapped persons.

(c) *Compliance planning.* (1) A recipient shall, within 90 days from the effective date of this part, designate and forward to the head of any operating administration providing financial assistance, with a copy to the responsible Departmental official the names, addresses, and telephone numbers of the persons responsible for evaluating the recipient's compliance with this part.

(2) A recipient shall, within 180 days from the effective date of this part, after consultation at each step in paragraphs (c)(2) (i)–(iii) of this section with interested persons, including handicapped persons and organizations representing the handicapped:

(i) Evaluate its current policies and practices for implementing these regulations, and notify the head of the operating administration of the completion of this evaluation;

(ii) Identify shortcomings in compliance and describe the methods used to remedy them;

(iii) Begin to modify, with official approval of recipient's management, any policies or practices that do not meet the requirements of this part according to a schedule or sequence that includes milestones or measures of achievement. These modifications shall be completed within one year from the effective date of this part;

(iv) Take appropriate remedial steps to eliminate the effects of any discrimination that resulted from previous policies and practices; and

(v) Establish a system for periodically reviewing and updating the evaluation.

(3) A recipient shall, for at least three years following completion of the evaluation required under paragraph (c)(2) of this section, maintain on file, make available for public inspection, and furnish upon request to the head of the operating administration:

(i) A list of the interested persons consulted;

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

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

§ 27.13 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each recipient that employs fifteen or more persons shall, within 90 days of the effective date of this regulation, forward to the head of the operating administration that provides financial assistance to the recipient, with a copy to the responsible Departmental official, the name, address, and telephone number of at least one person designated to coordinate its efforts to comply with this part. Each such recipient shall inform the head of the operating administration of any subsequent change.

(b) *Adoption of complaint procedures.* A recipient that employs fifteen or more persons shall, within 180 days, adopt and file with the head of the operating administration procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part.

§ 27.15 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. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs or activities. The notification shall also include an identification of the responsible employee designated pursuant to

§ 27.13(a). A recipient shall make the initial notification required by this section within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications and distribution of memoranda or other written communications.

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

§ 27.17 Effect of State or local law.

The obligation to comply with this part is not obviated or affected by any State or local law.

§§ 27.19–29 [Reserved].

Subpart B—Employment Practices

§ 27.31 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped applicant for employment, or an employee 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.

(2) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner assuring that discrimination on the basis of handicap does not occur. A recipient may not limit, segregate, or classify applicants for employment or employees in any way that adversely affects their opportunities or status on the basis of handicap. This part does not prohibit the consideration of handicap in decisions affecting employment if the purpose and effect of the consideration is to remove or overcome impediments or the present effects of past impediments to the employment of handicapped persons.

(3) A recipient may not enter a contractual or other relationship that subjects qualified handicapped applicants for employment or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, or with organizations providing training and apprenticeship programs.

(b) *Specific Activities.* A recipient shall not discriminate on the basis of handicap in:

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

(2) Hiring, upgrading, promoting, awarding tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

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

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

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

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

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

§ 27.33 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known handicaps of an otherwise qualified applicant for employment or employee unless the recipient can demonstrate to the responsible Departmental official that the accommodation would impose an undue hardship on the operations of its program.

(b) Reasonable accommodation includes (but is not limited to):

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

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment, and similar actions; and

(3) The assignment of an employee who becomes handicapped and unable to perform his/her original duties to an alternative position with comparable pay.

(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, including 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;

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

(4) Its effect on program accomplishments, including safety.

(d) A recipient shall not deny any employment opportunity to a qualified handicapped employee or applicant for employment if the basis for the denial is the need to make reasonable accommodations to the handicaps of the employee or applicant.

§ 27.35 Employment criteria.

(a) A recipient shall not make use of an employment test or other selection criterion that has an adverse impact or tends to have an adverse impact on handicapped persons, unless:

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

(2) Alternative job-related tests or criteria that do not have an adverse impact or do not tend to have an adverse impact on handicapped persons are shown by the recipient to be unavailable.

(b) A recipient shall select and administer tests that, when administered to an applicant for employment or an employee with impaired sensory, manual, or speaking skills, nonetheless accurately measure what they purport to measure.

§ 27.37 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient shall not conduct a preemployment medical examination or inquiry as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment medical examinations that are required by Federal law or regulation or inquiries into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action pursuant to § 27.11 (a) or (c), or when a recipient is taking affirmative action pursuant to section 505 of the Act (which relates to government procurement), the recipient may invite applicants for employment to

...dicate whether and to what extent ...ey are handicapped, provided that:

(1) The recipient makes clear that the ...formation requested is intended for ...se solely in connection with the ...emedial action obligations or its ...oluntary or affirmative actions efforts; and

(2) The recipient makes clear that the ...formation is being requested on a ...oluntary basis, that it will be kept ...onfidential, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section prohibits a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, if:

(1) All entering employees in that category of job classification must take such an examination regardless of whether or not they are handicapped; and

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

(d) Information obtained in accordance with this section shall be collected and maintained on separate forms and treated confidentially, except that:

(1) Supervisors and managers may be informed of restrictions on the work or duties of handicapped persons and 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, consistent with the Privacy Act of 1974, 5 USC 552a.

§§ 27.39–59 [Reserved]

Subpart C—Program Accessibility—General

§ 27.61 Applicability.

This subpart applies to all programs of the Department of Transportation to which section 504 is applicable. Additional provisions with respect to certain specific programs of the Department are set forth in subparts D and E. The provisions of this subpart should be interpreted in a manner that will make them consistent with the provisions of subparts D and E. In the case of apparent conflict, the provisions of subparts D and E shall prevail.

§ 27.63 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.

§ 27.65 Existing facilities.

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

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, alteration of existing facilities and construction of new facilities in accordance with the requirements of § 27.67(d) or any other methods that result in making its program or activity accessible to handicapped persons. In choosing among available methods for meeting the requirements of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) *Structural changes.* Where structural changes are necessary to make programs or activities in existing facilities meet the requirements of paragraph (a) of this section, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of this regulation unless otherwise provided in subpart D or E.

(d) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirements of paragraph (a) of this section, a recipient shall develop, and submit in duplicate to the cognizant operating administration providing Federal financial assistance, within one year of the effective date of this part, a transition plan listing the facilities and setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan and a list of the interested persons and organizations consulted shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify each facility required to be modified by this part. Facilities shall be listed even though the recipient contemplates requesting a waiver of the requirement to modify the facility;

(2) Identify physical obstacles in the listed facilities that limit the accessibility of its program or activity to handicapped persons;

(3) Describe the methods that will be used to make the listed facilities accessible;

(4) Describe how and the extent to which the surrounding areas will be made accessible;

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

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

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

§ 27.67 New facilities and alterations.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed, constructed, and operated in a manner so that the facility or part of the facility is accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part; with respect to vehicles, unless otherwise provided in subpart D or E, this requirement is effective for vehicles for which solicitations are issued or which are leased after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the accessibility of the facility or part of the facility shall, to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) When an existing vehicle is renovated substantially to prolong its life, the vehicle shall, to the maximum extent feasible, meet the requirements for a comparable new vehicle. Lesser renovations shall incorporate accessibility features for a comparable

new vehicle when practicable and justified by the remaining life expectancy of the vehicle.

(d) *ANSI standards.* Design, construction or alteration of fixed facilities in paragraphs (a) and (b) of this section shall be in accordance with the minimum standards in the "American National Standard Specifications for Making Buildings *and* Facilities Accessible to, and Usable by, the Physically Handicapped," published by ANSI, Inc. (ANSI A117.1–1961 (R1971)), which is incorporated by reference in this part. Departures from particular requirements of these standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

§ 27.69 [Reserved]

Subpart D—Program Accessibility Requirements in Specific Operating Administration Programs; Airports, Railroads, and Highways

§ 27.71 Federal Aviation Administration—Airports.

(a) *Fixed facilities; New terminals*—(1) Terminal facilities designed and constructed by or for the use of a recipient of Federal financial assistance on or after the effective date of this part, the intended use of which will require it to be accessible to the public or may result in the employment therein of physically handicapped persons, shall be designed or constructed in accordance with the ANSI standards. Where there is ambiguity or contradiction between the definitions and the standards used by ANSI and the definitions and standards used in paragraph (a)(2) of this section, the ANSI terms should be interpreted in a manner that will make them consistent with the standards in paragraph (a)(2) of this section. If this cannot be done, the standards in paragraph (a)(2) of this section prevail.

(2) In addition to the ANSI standards, the following standards apply to new airport terminal facilities:

(i) *Airport terminal circulation and flow.* The basic terminal design shall permit efficient entrance and movement of handicapped persons while at the same time giving consideration to their convenience, comfort, and safety. It is also essential that the design, especially concerning the location of elevators, escalators, and similar devices, minimize any extra distance that wheel chair users must travel compared to nonhandicapped persons, to reach ticket counters, waiting areas, baggage handling areas, and boarding locations.

(ii) *International accessibility symbol.* The international accessibility symbol shall be displayed at accessible entrances to buildings that meet the ANSI standards.

(iii) *Ticketing.* The ticketing system shall be designed to provide handicapped persons with the opportunity to use the primary fare collection area to obtain ticket issuance and make fare payment.

(iv) *Baggage check-in and retrieval.* Baggage areas shall be accessible to handicapped persons. The facility shall be designed to provide for efficient handling and retrieval of baggage by all persons.

(v) *Boarding.* Each operator at an airport receiving any Federal financial assistance shall assure that adequate assistance is provided for enplaning and deplaning handicapped persons. Boarding by jetways and by passenger lounges are the preferred methods for movement of handicapped persons between terminal buildings and aircraft at air carrier airports; however, where this is not practicable, operators at air carrier airport terminals shall assure that there are lifts, ramps, or other suitable devices not normally used for movement of freight that are available for enplaning and deplaning wheelchair users.

(vi) *Telephones.* Wherever there are public telephone centers in terminals, at least one clearly marked telephone shall be equipped with a volume control or sound booster device and with a device available to handicapped persons that makes telephone communication possible for persons wearing hearing aids.

(vii) *Teletypewriter.* Each airport shall ensure that there is sufficient teletypewriter (TTY) service to permit hearing-impaired persons to communicate readily with airline ticket agents and other personnel.

(viii) *Vehicular loading and unloading areas.* Several spaces adjacent to the terminal building entrance, separated from the main flow of traffic, and clearly marked, shall be made available for the loading and unloading of handicapped passengers from motor vehicles. The spaces shall allow individuals in wheelchairs or with braces or crutches to get in and out of automobiles onto a level surface suitable for wheeling and walking.

(ix) *Parking.* In addition to the requirements in the ANSI standards the following requirements shall be met:

(A) Curb cuts or ramps with grades not exceeding 8.33 percent shall be provided at crosswalks between park areas and the terminal;

(B) Where multi-level parking is provided, ample and clearly marked space shall be reserved for ambulatory and semi-ambulatory handicapped persons on the level nearest the ticketing and boarding portion of the terminal facilities, and

(C) In multi-level parking areas, elevators, ramps, or other devices that can accommodate wheelchair users shall be easily available.

(x) *Waiting area/public space.* As the major public area of the airport terminal facility, the environment in the waiting area/public space should give the handicapped person confidence and security in using the facility. The space shall be designed to accommodate the handicapped providing clear direction about how to use all passenger facilities.

(xi) *Airport terminal information.* Airport terminal information systems shall take into consideration the needs of handicapped persons. The primary information mode shall be visual words and letters, or symbols, using lighting and color coding. Airport terminals shall also have facilities providing information orally.

(xii) *Public services.* Public service facilities such as public toilets, drinking fountains, telephones, travelers aid and first aid medical facilities shall be designed in accordance with ANSI standards.

(b) *Fixed facilities; existing terminals*—(1) *Structural changes.* Where structural changes are necessary to make existing air carrier terminals which are owned and operated by recipients of Federal financial assistance accessible to and usable by handicapped persons, such changes shall be made in accordance with the ANSI standards as soon as practicable, but in no event later than three years after the effective date of this part.

(2) *Ongoing renovation.* In terminals that are undergoing structural changes involving entrances, exits, interior doors, elevators, stairs, baggage areas, drinking fountains, toilets, telephones, eating places, curbs, and parking areas, recipients shall begin immediately to incorporate accessibility features.

(3) *Transition.* Where extensive structural changes to existing facilities are necessary to meet accessibility requirements, recipients shall develop a transition plan in accordance with § 27.65(d) and submit it to the Federal Aviation Administration (FAA). Transition plans are reviewed and approved or disapproved by the FAA as expeditiously as possible after they are received.

(4) *Boarding.* Each operator at an airport receiving any Federal financial assistance shall assure that adequate assistance is provided incident to enplaning and deplaning handicapped persons. Within three years from the effective date of this part, recipients operating terminals at air carrier airports that are not equipped with jetways or passenger lounges for boarding and unboarding shall assure that there are lifts, ramps, or other suitable devices, not normally used for movement of freight, are available for enplaning and deplaning wheelchair users.

(5) *Passenger services.* Recipients operating terminals at air carrier airports shall assure that there are provisions for assisting handicapped passengers upon request in movement into, out of, and within the terminal, and in the use of terminal facilities, including baggage handling.

(6) *Guide dogs.* Seeing eye and hearing guide dogs shall be permitted to accompany their owners and shall be accorded all the privileges of the passengers whom they accompany in regard to access to terminals and facilities.

§ 27.73 Federal Railroad Administration—Railroads.

(a) *Fixed facilities.* (1) New facilities—(i) Every fixed facility or part of a facility—including every station, terminal, building, or other facility—designed or constructed by or for the use of a recipient of Federal financial assistance on or after the effective date of this part, the intended use of which will require it to be accessible to the public or may result in the employment therein of physically handicapped persons, shall be designed and constructed in accordance with the ANSI standards. Where there is ambiguity or contradiction between the definitions and the standards used by ANSI and the definitions and standards used in paragraph (a)(1)(ii) of this section, the ANSI terms should be interpreted in a manner that will make them consistent with the standards in paragraph (a)(1)(ii) of this section. If this cannot be done, the standards in paragraph (a)(1)(ii) of this section will prevail.

(ii) In addition to the ANSI standards the following standards also apply to rail facilities;

(A) *Station circulation and flow.* The basic station design shall permit efficient entrance and movement of handicapped persons while at the same time giving consideration to their convenience, comfort, and safety. The design, especially concerning the location of elevators, escalators, and similar devices, shall minimize any extra distance that wheelchair users must travel, compared to nonhandicapped persons, to such ticket counters, baggage handling areas and boarding locations.

(B) *International accessibility symbol.* The international accessibility symbol shall be displayed at accessible entrances to buildings that meet ANSI standards.

(C) *Ticketing.* The ticketing system shall be designed to provide handicapped persons with the opportunity to use the primary fare collection area to obtain ticket issuance and make fare payment.

(D) *Baggage check-in and retrieval.* Baggage areas shall be accessible to handicapped persons. The facility shall be designed to provide for efficient handling and retrieval of baggage by all persons.

(E) *Boarding platforms.* All boarding platforms that are located more than two feet above ground or present any other dangerous condition, shall be marked with a warning device consisting of a string of floor material differing in color and texture from the remaining floor surface. The design of boarding platforms shall be coordinated with the vehicle design where possible in order to minimize the gap between platform and vehicle doorway and to permit safe passage by wheelchair users and other handicapped persons. Where level entry boarding is not provided, lifts, ramps or other suitable devices shall be available to permit boarding by wheelchair users.

(F) *Telephones.* At least one clearly marked telephone shall be equipped with a volume control or sound booster device and with a device available to handicapped persons that makes telephone communication possible for persons wearing hearing aids.

(G) *Teletypewriter.* Recipients shall make available a toll-free reservation and information number with teletypewriter (TTY) capabilities, to permit hearing-impaired persons using TTY equipment to readily obtain information or make reservations for any services provided by a recipient.

(H) *Vehicular loading and unloading areas.* Several spaces adjacent to the terminal entrance separated from the main flow of traffic and clearly marked shall be made available for the boarding and exiting of handicapped persons. The spaces shall allow individuals in wheelchairs or with braces or crutches to get in and out of vehicles onto a level surface suitable for wheeling or walking.

(I) *Parking.* Where parking facilities are provided, at least two spaces shall be set aside and identified for the exclusive use of handicapped persons. Curb cuts or ramps with grades not exceeding 8.33 percent shall be provided at crosswalks between parking areas and the terminal. Where multi-level parking is provided, ample space which is clearly marked shall be reserved for handicapped persons with limited mobility on the level which is most accessible to the ticketing and boarding portion of the terminal facilities; such level change shall be by elevator, ramp, or by other devices which can accommodate wheelchair users.

(J) *Waiting area/public space.* As the major public area of the rail facility, the environment in the waiting area/public space should give the handicapped persons confidence and security in using the facility. The space shall be designed to accommodate the handicapped by providing clear directions about how to use all passenger facilities.

(K) *Station information.* Station information systems shall take into consideration the needs of handicapped persons. The primary information mode shall be visual words and letters or symbols using lighting and color coding. Stations shall also have facilities for giving information orally. Scheduling information shall be available in a tactile format or through the use of a toll-free telephone number.

(L) *Public services.* Public service facilities, such as public toilets, drinking fountains, telephones, travelers aid and first aid medical facilities, shall be designed in accordance with ANSI standards.

(2) *Existing facilities*—(i) *Ongoing renovation.* All recipients shall begin immediately to incorporate accessibility features in stations and terminals that are already undergoing structural changes involving entrances and exits, interior doors, elevators, stairs, baggage areas, drinking fountains, toilets, telephones, eating places, boarding platforms, curbs, and parking garages.

(ii) *Structural changes.* Existing stations shall be modified to ensure that the facilities, when viewed in their entirety, are readily accessible to and usable by handicapped persons.

(iii) *Scheduling of structural changes.* (A) Within five years from the effective date of this section, recipients shall make accessible no less than one station in each Standard Metropolitan Statistical Area (SMSA) served by the recipient. Where there is more than one station in an SMSA, recipients shall select the station with the greatest

annual passenger volume for modification within five years.

(B) Within ten years of the effective date of this section, recipients shall make accessible all other stations in each SMSA.

(C) Within five years of the effective date of this section, recipients shall make accessible stations located outside of an SMSA and not located within 50 highway miles of an accessible station. Where there are two or more stations within 50 highway miles of one another, a recipient shall select the station with the greatest annual passenger volume for modification within five years.

(D) Within ten years of the effective date of this section, recipients shall make accessible all other stations located outside of an SMSA.

(iv) *Waiver procedure.* (A) Recipients may petition the Federal Railroad Administrator for a waiver from the requirement to make a particular station accessible under § 27.73(a)(2)(iii) (B) and (D). Such petitions shall be submitted no later than six years after the effective date of this section.

(B) A request for a waiver shall be supported by a written justification to the Federal Railroad Administrator. The justification shall include a record of a community consultative process in the area served by the station for which a waiver is sought. This request shall include a transcript of a public hearing. Handicapped persons and organizations in the area concerned shall be involved in the consultative process.

(C) Factors that are applicable to the determination on a petition for waiver and the conditions that would apply to the waiver include, but are not limited to: (1) The utilization of the station; (2) the cost of making modifications to the station; (3) and the availability of alternative, accessible means of transportation for handicapped persons that meet the needs of those persons for efficient and timely service at a fare comparable to rail fare from the area served by the station to the nearest accessible station in each direction of travel.

(D) Within 30 days of the date the waiver request is filed with the FRA, representatives of the FRA will meet with representatives of the Interstate Commerce Commission (ICC) to determine if the justification is adequate. The representatives will coordinate their efforts so that any changes requested by either FRA or ICC are consistent.

(E) If no agreement can be reached by the FRA and ICC on the adequacy of the justification within 60 days from the date the representatives first meet, the waiver request shall be denied.

(v) *Transition plan.* Where extensive changes to existing facilities are necessary to meet accessibility requirements, recipients shall develop a transition plan in accordance with § 27.65(d) and submit it, in duplicate, to the Federal Railroad Administration (FRA).

(vi) *Approval of transition plan.* (A) Transition plans are reviewed and approved or disapproved as expeditiously as possible after they are received. Within 30 days from the date the plan is filed with the FRA, representatives of the FRA meet with representatives of the ICC to determine if the plan is adequate. The representatives coordinate their efforts so that any changes requested by either the FRA or the ICC are consistent.

(B) If no agreement can be reached by the FRA and the ICC within 60 days from the date the representatives first meet, the transition plan shall be disapproved.

(vii) *Existing danger.* Every existing facility and piece of equipment shall be free of conditions which pose a danger to the life or safety of handicapped persons. Upon discovery of such conditions, the danger shall be immediately eliminated and all necessary steps taken to protect the handicapped, or a particular category of handicapped persons, from harm during the period that the facility or equipment is being made safe.

(b) *Rail vehicles.* (1) Within five years from the effective date of this part, on each passenger train:

(i) At least one coach car shall be accessible;

(ii) Where sleeping cars are provided, at least one sleeping car shall be accessible; and

(iii) At least one car in which food service is available shall be accessible to handicapped persons, or they shall be provided food service where they are seated.

In cases where the only accessible car is first class, first class seating for handicapped persons shall be provided at coach fare.

(2) In order for a passenger car to be accessible to handicapped persons, the following shall be available:

(i) Space to park and secure one or more wheelchairs to accommodate persons who wish to remain in their wheelchairs, and space to fold and store one or more wheelchairs to accommodate individuals who wish to sit in coach seats.

(ii) Accessible restrooms with wide doorways, bars to assist the individual in moving from wheelchair to toilet, low sinks, and other appropriate modifications. These restrooms should be large enough to accommodate wheelchairs.

(3) All new rail passenger vehicles for which solicitations are issued after the effective date of this part by recipients of Federal financial assistance shall be designed so as to be accessible to handicapped persons and shall display the international accessibility symbol at each entrance.

(c) *Rail passenger service.* (1) No recipient shall deny transportation to any person who meets the requirements of this regulation because that person cannot board a train without assistance, or use on-train facilities without assistance, except as provided in this regulation.

(2) Handicapped persons who require the assistance of an attendant shall not be denied transportation so long as they are accompanied by an attendant. Handicapped persons who require the service of an attendant, but who are unaccompanied, are not required under this part to be transported by the recipient. Handicapped persons requiring the assistance of an attendant shall include those who cannot take care of any one of their fundamental personal needs.

(3) All recipients at stations, except flag stops and closed stations, shall, on advance notice of 12 hours or more, provide assistance to handicapped persons, except that those handicapped persons who require the services of an attendant shall give advance notice of at least 24 hours. Such assistance shall include, but is not limited to, advance boarding and assisting handicapped persons in moving from station platform onto the train and to a seat. The recipient shall provide the same assistance to handicapped persons as they leave the train or board another train in the process of changing trains. Recipients shall provide assistance upon request to handicapped persons in the use of station facilities and in the handling of baggage.

(4) In all open stations, there shall be prominently displayed a notice stating the location of the recipient's representative or agent who is responsible for providing assistance to handicapped persons. Recipients shall publish in their schedules a notice of those closed stations and flag stops at which assistance cannot be provided to handicapped persons.

(5) Assistance to handicapped persons in the use of on-train facilities shall be provided as follows:

(i) *General assistance.* Recipients shall provide assistance to handicapped persons in moving to and from accommodations, including assistance in moving to and from wheelchairs.

(ii) *Restroom facilities.* All recipients shall, upon request, provide assistance to handicapped persons needing assistance in gaining access to rest and washroom facilities.

(iii) *Sleeping car service.* All recipients on all trains where sleeping car service is provided shall, upon request, provide assistance in gaining access to the facilities on various accommodations, such as roomette, bedroom, or compartment.

(iv) *Dining and lounge car service.* Where dining cars, food service cars, or lounge cars are inaccessible to handicapped persons, all recipients shall, upon request, provide meal, beverage, and snack service to handicapped persons needing such service in their accommodations.

(6) *Assistance with wheelchairs, crutches, walkers, and canes.* All recipients shall provide coach or sleeping car space to store, and shall assist in storing, such orthopedic aids as wheelchairs, walkers, crutches, and canes. These orthopedic aids shall be stored on the same coach or sleeping car in which the handicapped person travels.

(7) *Notice of assistance available provided in the use of on-board facilities.* All recipients shall, on all coaches, sleeping cars, dining cars, food service cars, and lounge cars, permanently display a notice stating where and from whom assistance in the use of facilities of various cars may be obtained.

(8) *Bedridden and stretcher-bound passengers.* (i) Where equipment is designed or modified to accept bedridden or stretcher-bound passengers without unreasonable delay, the recipient shall provide assistance in the boarding of bedridden or stretcher-bound persons into sleeping quarters. Accessibility to coaches for these persons is not required.

(ii) Advance notification of 24 hours or more is mandatory in order to ensure provision of assistance to bedridden or stretcher-bound passengers. For the purpose of this section, assistance need not necessarily include placing the bedridden or stretcher-bound person into the compartment.

(9) *Passengers requiring life support equipment.* Recipients shall not be required to transport persons who are dependent upon life support equipment needing power from the vehicle.

(10) *Guide dogs.* Seeing eye dogs and hearing guide dogs shall be permitted to accompany their owners on all passenger trains, and shall be permitted in coach, sleeping, and dining cars.

(11) *Services to deaf and blind passengers.* Recipients shall provide assistance to deaf and/or blind passengers, on request, by advising them of station stops.

(12) Recipients shall notify the public that they provide services that facilitate travel by handicapped persons.

(13) Recipients shall provide training to their employees sufficient to enable them to carry out the recipients' responsibilities under this section.

§ 27.75 Federal Highway Administration—Highways.

(a) New Facilities—(1) *Highway rest area facilities.* All such facilities that will be constructed with Federal financial assistance shall be designed and constructed in accordance with the ANSI standards.

(2) *Curb cuts.* All pedestrian crosswalks constructed with Federal financial assistance shall have curb cuts or ramps to accommodate persons in wheelchairs, pursuant to section 228 of the Federal-Aid Highway Act of 1973 (23 U.S.C. 402(b)(1)(F)).

(3) *Pedestrian over-passes, under-passes and ramps.* Pedestrian over-passes, under-passes and ramps, constructed with Federal financial assistance, shall be accessible to handicapped persons, including having gradients no steeper than 10 percent, unless:

(i) Alternate safe means are provided to enable mobility-limited persons to cross the roadway at that location; or

(ii) It would be infeasible for mobility-limited persons to reach the over-passes, under-passes or ramps because of unusual topographical or architectural obstacles unrelated to the federally assisted facility.

(b) Existing Facilities. *Rest area facilities.* Rest area facilities on Interstate highways shall be made accessible to handicapped persons, including wheelchair users, within a three-year period after the effective date of this part. Other rest area facilities shall be made accessible when Federal financial assistance is used to improve the rest area, or when the roadway adjacent to or in the near vicinity of the rest area is constructed, reconstructed or otherwise altered with Federal financial assistance.

§§ 27.77-79 [Reserved]

Subpart E—Program Accessibility, Requirements in Specific Operating Administration Programs: Mass Transportation

§ 27.81 Purpose.

The purpose of this subpart is, in addition to implementing section 504 of the Rehabilitation Act of 1973, also to implement section 16(a) of the Urban Mass Transportation Act of 1964, as amended, and section 165(b) of the Federal-Aid Highway Act of 1973, as amended. These latter statutes are designed to increase the availability to elderly and handicapped persons of mass transportation that they can effectively utilize. Section 165(b) also requires access for elderly and handicapped persons to public mass transportation facilities, equipment, and services. This subpart consolidates and revises existing Urban Mass Transportation Administration (UMTA) regulations, policies, and administrative practices implementing the above statutes.

§ 27.83 Fixed facilities for the public.

(a) *Existing fixed facilities.* Fixed facility accessibility shall be achieved by a staged sequence of fixed facility modifications, replacements, and new construction that reflects reasonable and steady progress. Changes not involving extraordinarily expensive structural changes to, or replacement of, existing facilities shall be implemented as soon as practicable but not later than three years after the effective date of this regulation. Other fixed facility accessibility changes shall be made as soon as practicable but no later than the deadlines specified in §§ 27.85–27.95.

(b) *New fixed facilities and alterations.* In addition to the requirements of § 27.67, new transit fixed facilities for the public shall incorporate such other features as are necessary to make the fixed facilities accessible to handicapped persons. Existing fixed facilities shall incorporate these same features to the extent provided by §§ 27.85–27.95. In particular among these features, the design of boarding platforms for level-entry vehicles shall be coordinated with the vehicle design in order to minimize the gap between the platform and vehicle doorway and to permit safe passage by wheelchair users and other handicapped persons. Special attention shall be given to the needs of handicapped persons in the areas of fare vending and collection systems, visual and aural information systems, telephones (wheelchair users

and persons with reduced hearing ability require certain accommodations), teletype machines to handle calls from deaf persons, vehicular loading and unloading areas, and parking areas at park-and-ride facilities.

§ 27.85 Fixed route bus systems.

(a) *Program accessibility.* (1) Program accessibility for a fixed route bus system is achieved when:

(i) The system is accessible to handicapped persons who can use steps; and

(ii) The system, when viewed in its entirety, is accessible to wheelchair users. With respect to vehicles, this requirement means that at least one-half of the peak-hour bus service must be accessible and accessible buses must be used before inaccessible buses during off-peak service.

(2) Fixed route bus systems shall achieve program accessibility as soon as practicable but no later than three years after the effective date of this regulation; provided, however, that the time limit is extended to 10 years for the extraordinarily expensive structural changes to, or replacement of, existing facilities, including vehicles, necessary to achieve program accessibility.

(3) Nothing in this section shall require any recipient to install a lift on any bus for which a solicitation was issued on or before February 15, 1977.

(b) *New vehicles.* New fixed route buses of any size for which solicitations are issued after the effective date of this part shall be accessible to handicapped persons, including wheelchair users. With respect to new, standard, full-size urban transit buses, this requirement remains in effect until such time as solicitations for those buses must use UMTA's bid package entitled "Transbus Procurement Requirements."

§ 27.87 Rapid and commuter rail systems.

(a) *Program accessibility.* Program accessibility for a rapid or a commuter rail system is achieved when the system, when viewed in its entirety, is accessible to handicapped persons, including wheelchair users. This general requirement means that:

(1) *Stations.* All stations must be accessible to handicapped persons who can use steps, and key stations must be accessible to wheelchair users.

(i) For rapid rail systems, key stations are those that are:

(A) Stations where passenger boardings exceed average station boardings by at least 15 percent;

(B) Transfer points on a rail line or between rail lines;

(C) Major interchange points with other transportation modes;

(D) End stations, unless an end station is close to another accessible station;

(E) Stations serving major activity centers of the following types: employment and government centers, institutions of higher learning, and hospitals or other health care facilities; or

(F) Stations that are special trip generators for sizeable numbers of handicapped persons.

(ii) For commuter rail systems, key stations are those that are:

(A) Transfer points on a rail line or between rail lines;

(B) Major interchange points with other transportation modes;

(C) End stations, unless an end station is close to another accessible station;

(D) Stations serving major activity centers of the following types: employment and government centers, institutions of higher learning, and hospitals or other health care facilities;

(E) Stations that are special trip generators for sizeable numbers of handicapped persons; or

(F) Stations that are distant from other accessible stations.

(2) *Vehicles.* All vehicles must be accessible to handicapped persons who can use steps, and one vehicle per train must be accessible to wheelchair users.

(3) *Connector service.* With respect to rapid rail systems, accessible connector service is provided between accessible and inaccessible stations. The connector service may be provided by regular bus service, special bus service, special service paratransit, or any other accessible means of transportation that will transport a handicapped person from the vicinity of an inaccessible rapid rail station to the vicinity of the nearest accessible station in the person's direction of travel, or vice-versa. Provision of connector service is an integral part of rapid rail program accessibility. The connector service, when combined with the key stations, must provide a level of service reasonably comparable to that provided for a nonhandicapped person.

(4) *Timing.* Rapid and commuter rail systems shall achieve program accessibility as soon as practicable but no later than three years after the effective date of this part; provided, however, that the time limit is extended to 30 years for extraordinarily expensive structural changes to, or replacement of, existing fixed facilities necessary to achieve program accessibility. Steady progress is required over that 30-year period. The time limit is extended to five years with respect to rapid rail vehicles and 10 years with respect to commuter rail vehicles for extraordinarily expensive structural changes to, or replacement of, existing rail vehicles. Complete connector service for rapid rail systems shall be provided no later than 30 years after the effective date of this part. Over this time period, there shall be a steady build-up of the connector service that is coordinated with the completion of key stations; however, no later than 12 years from the effective date of this part, the connector service shall provide effective and efficient utilization of those key stations that have been made accessible.

(5) *Assessment.* Twelve years after the effective date of this part, rapid and commuter rail operators shall prepare a full report for the Department on what accessibility improvements have been made, what the costs have been, and what the ridership attributable to the accessibility improvements has been.

(b) *New vehicles.* New rapid rail vehicles for which solicitations are issued after the effective date of this part shall be accessible, except that gap closing devices, if determined to be necessary for accessible operation of stations or cars, are not required for vehicles for which solicitations are issued before January 1, 1983. New commuter rail vehicles for which solicitations are issued on or after January 1, 1983, shall be accessible to wheelchair users; however, new commuter rail vehicles for which solicitations are issued after the effective date of this part shall be accessible to handicapped persons who can use steps.

§ 27.89 Light rail systems.

(a) *Program accessibility.* Program accessibility for a light rail system is achieved when the system, when viewed in its entirety, is accessible to handicapped persons, including wheelchair users. This general requirement means that:

(1) *Stations.* All stations must be accessible to handicapped persons who can use steps, and key stations must be accessible to wheelchair users. Key stations are those that are:

(i) Transfer points on a rail line or between rail lines;

(ii) Major interchange points with other transportation modes;

(iii) End stations, unless an end station is close to another accessible station;

(iv) Stations serving major activity centers of the following types: employment and government centers, institutions of higher learning and

hospitals or other health care facilities; or

(v) Stations that are special trip generators for sizeable numbers of handicapped persons.

(2) *Vehicles.* Each light rail vehicle must be accessible to handicapped persons who can use steps; at least one-half of the peak-hour light rail service must be accessible to wheelchair users and accessible light rail vehicles must be used before inaccessible vehicles during off-peak service.

(3) *Timing.* Light rail systems shall achieve program accessibility as soon as practicable but no later than three years after the effective date of this part; provided, however, that the time limit is extended to 20 years for extraordinarily expensive structural changes to, or replacement of, existing fixed facilities and vehicles necessary to achieve program accessibility.

(4) *Assessment.* Twelve years after the effective date of this part, light rail operators shall prepare a full report for the Department on what accessibility improvements have been made, what the costs have been, and what the ridership attributable to the accessibility improvements has been.

(b) *New vehicles.* New light rail vehicles for which solicitations are issued on or after January 1, 1983, shall be accessible to wheelchair users; however, new light rail vehicles for which solicitations are issued after the effective date of this part shall be accessible to handicapped persons who can use steps.

§ 27.91 Paratransit systems.

(a) *General.* Each paratransit system shall be operated so that the system, when viewed in its entirety, is accessible to handicapped persons, including wheelchair users. This means that the system must operate a number of vehicles sufficient to provide generally equal service to handicapped persons who need such vehicles as is provided to other persons. Where new vehicles must be purchased or structural changes must be made to meet this requirement, the purchase or changes shall be made as soon as practicable but no later than three years after the effective date of this regulation.

(b) *New vehicles.* New paratransit vehicles for which solicitations are issued after the effective date of this part shall be accessible to handicapped persons, unless the paratransit system is and will remain in compliance with paragraph (a) of this section without the new vehicles being accessible.

§ 27.93 Systems not covered by §§ 27.85–27.91.

(a) *Scope.* This section applies to forms of mass transportation not covered by §§ 27.85–27.91 (e.g., ferry boat).

(b) *General.* (1) Program accessibility for a subject system is achieved when the system, when viewed in its entirety, is accessible to handicapped persons, including wheelchair users.

(2) Subject systems shall achieve program accessibility as soon as practicable but in no event later than three years after the effective date of this regulation, provided, however, that this period may be extended upon appeal to the Urban Mass Transportation Administrator if program accessibility can be achieved only through extraordinarily expensive structural changes to or replacement of, existing facilities, including vehicles, and if other accessible modes of transportation are available that meet the needs of handicapped persons for efficient and timely service at a fare comparable to that of the subject system in the service area of that system.

§ 27.95 Program policies and practices.

(a) Program policies and practices that prevent a system subject to this subpart from achieving program accessibility shall be modified as soon as reasonably possible but in no event later than three years after the effective date of this part. This three-year period shall prevail over the one-year period of § 27.11(c)(2).

(b) The following program policies and practices which influence the achievement of program accessibility shall, along with any other appropriate practice, be addressed in the planning process:

(1) Safety and emergency policies and procedures.

(2) Periodic sensitivity and safety training for personnel.

(3) Accommodations for companions or aides of handicapped travelers.

(4) Intermodal coordination of transportation providers.

(5) Coordination with social service agencies that provide or support transportation for handicapped persons.

(6) Comprehensive marketing considerate of handicapped persons' travel needs.

(7) Leasing, rental, procurement, and other related administrative practices.

(8) Involvement of existing private and public operators of transit and public paratransit in planning and competing to provide other accessible modes and appropriate services.

(9) Regulatory reforms to permit and encourage accessible services.

(10) Management supervision of accessible facilities and vehicles.

(11) Maintenance and security of accessibility features.

(12) Labor agreements and work rules.

(13) Appropriate insurance coverage.

§ 27.97 Interim accessible transportation.

(a) *Period prior to interim accessible transportation.* Until the requirement of paragraph (b) of this section is met, the annual element of each urbanized area's transportation improvement program submitted to UMTA after the effective date of this part shall exhibit a reasonable level of effort in programming projects or project elements designed to benefit handicapped persons who cannot otherwise use the recipient's transportation system until it is made accessible in accordance with the requirements of this part. Reasonable progress in implementing previously programmed projects, including those programmed before the effective date of this part, shall be demonstrated by recipients. Recipients, working through the Metropolitan Planning Organization (MPO), shall use their best efforts to comply with this paragraph in a way that will support the achievement of program accessibility and make the transition to interim accessible transportation efficient and cost-effective. Recipients, working through the MPO, shall also use their best efforts to coordinate and use effectively all available special services and programs in the community. Recipients in non-urbanized areas are generally subject to the requirements of this paragraph concerning special efforts in programming and implementation.

(b) *Interim accessible transportation*—(1) *General.* No later than three years after the effective date of this part, each recipient whose system has not achieved program accessibility shall provide or assure the provision of interim accessible transportation for handicapped persons who could otherwise use the system if it had been made accessible. Such transportation shall be provided until program accessibility has been achieved. An area's fixed route bus system will satisfy this requirement for a rail system if the bus system has achieved program accessibility and if the bus system serves the inaccessible portions of that rail system.

(2) *Standards and expenditures.* (i) The standards for interim accessible transportation shall be developed in cooperation with an advisory group of representatives of local handicapped persons and groups and be set forth in

the transition plan. During the period for interim accessible transportation, the recipient shall be obligated to spend annually an amount equal to two percent of the financial assistance it receives under section 5 of the Urban Mass Transportation Act of 1964, as amended, on such transportation, provided that a lower amount may be spent during any year when UMTA finds that the local advisory group had agreed with the recipient that expenditures at a lower level will provide an adequate level of service. If a recipient does not receive financial assistance under section 5, its obligation shall be an amount equal to two percent of the annual financial assistance it receives for mass transportation from the Department, with the same provision concerning lower expenditures. The recipient is not obligated to spend more on interim accessible transportation than the amount specified in this paragraph.

(ii) Subject to the expenditure limitation of paragraph (b)(2)(i) of this section, interim accessible transportation shall be available within the recipient's normal service area and during normal service hours and, to the extent feasible, meet the following requirements: there shall be no restrictions on trip purpose; combined wait and travel time, transfer frequency, and fares shall be comparable to that of the regular fixed-route system; service shall be available to all handicapped persons who could otherwise use the system if it had been made accessible, including wheelchair users who cannot transfer from a wheelchair and those who use powered wheelchairs; and there shall be no waiting list such that handicapped persons who have qualified or registered for the service are consistently excluded from that service by virtue of low capacity.

(3) *Coordination of existing services.* The recipient, working through the MPO, shall use its best efforts to coordinate and use effectively all available special services and programs in the community in order to ensure the provision of service that meets the standards of paragraph (b)(2)(ii) of this section. Such services and programs may reduce the recipient's expenditure obligation under paragraph (b)(2)(i) of this section if, in accordance with that paragraph, the handicapped advisory committee agrees that the full level of expenditure is not necessary.

§ 27.99 Waiver for existing rapid, commuter, and light rail systems.

A recipient that operates a rapid rail, commuter rail, or light rail system in existence on the effective date of this part may, through the MPO for the area or areas concerned, petition the Secretary for a waiver of any of its obligations under § 27.87 or § 27.89 with respect to accessibility for handicapped persons. Waiver requests may only be submitted after the MPO and handicapped persons and organizations representing handicapped persons in the community, through a consultative process, have developed arrangements for alternative service substantially as good as or better than that which would have been provided absent a waiver. Petitions shall be supported by a record of the community consultative process, including a transcript of a public hearing with notice and consultation with handicapped persons and organizations representing handicapped persons, and a complete transition plan for an accessible system. The Secretary may grant such a petition in his or her discretion, provided that the Secretary determines that local alternative service to handicapped persons will be substantially as good as or better than that which would have been provided by the waived requirement of this subpart. If the petition is for the major rapid rail system in New York, Chicago, Philadelphia, Boston or Cleveland (those systems currently operated by the New York City Transit Authority, the Chicago Transit Authority, the Southeastern Pennsylvania Transportation Authority, the Massachusetts Bay Transportation Authority, and the Greater Cleveland Regional Transit Authority) and the waiver is granted, the petitioner shall spend, or shall ensure that other UMTA recipients in the urbanized area spend, on an annual basis, at least an amount equal to five percent of the urbanized area's funds under section 5 of the Urban Mass Transportation Act of 1964, as amended, on this alternative service. For the purposes of the five percent measurement, "urbanized area" refers to the portion of an urbanized area located in one state.

§ 27.101 Period after program accessibility.

Following the achievement of program accessibility, all recipients whose systems are covered by this subpart shall continue to work with the MPO concerned to coordinate special services for handicapped persons.

§ 27.103 Transition plan.

(a) *General.* A transition plan shall be prepared for each urbanized and non-urbanized area receiving financial assistance from the Department for mass transportation. The transition plan is a document which describes the results of planning for program accessibility and defines a staged, multi-year program. The purpose of the plan is to identify the transportation improvements and policies needed to achieve program accessibility and to provide interim accessible transportation prior to the achievement of program accessibility in compliance with this part. The requirements of § 27.65(d) apply to transition plans prepared under this section unless they conflict with the requirements of this section, in which case the requirements of this section shall prevail.

(b) *Planning process.* (1) The urban transportation planning process of each urbanized and non-urbanized area receiving financial assistance from the Department for mass transportation shall include the development and periodic reappraisal and refinement of a transition plan which is an outgrowth of ongoing activities to plan public mass transportation facilities and services that can effectively be utilized by elderly and handicapped persons pursuant to 23 CFR 450.120(a)(5).

(2) The transition plan shall cover the entire period required to achieve program accessibility.

(3) The level of detail in the transition plan shall be appropriate for the size of the urban area, the complexity of its mass transportation system and the scheduling of its accessibility improvements.

(4) The development and periodic reappraisal and refinement of the transition plan shall:

(i) In urbanized areas, be done under the direction of the Metropolitan Planning Organization (MPO) in cooperation with State and local officials and operators of publicly owned mass transportation services in conformance with 23 CFR 450.306(a) and (b);

(ii) In non-urbanized areas, be done under the direction of local elected officials in cooperation with transit operators and the State; and

(iii) Be performed with community participation required by § 27.107.

(5) The transition plan shall be endorsed by the MPO in urbanized areas pursuant to 23 CFR 450.112(b) and shall be endorsed by the recipients responsible for implementing improvements and policies specified in the transition plan, with the recipient endorsement required only for the portions of the plan which affect each such recipient.

(c) *Plan content.* The transition plan shall include:

(1) Identification of public transportation vehicles, fixed facilities, services, policies, and procedures that do not meet the program accessibility requirements of this part;

(2) Identification by system and recipient of the improvements and policies required for bringing them into conformance with this part, including any required interim accessible transportation; the plan should indicate how interim accessible transportation service levels and fares were determined;

(3) Establishment of priorities among the improvements, reasonable implementation schedules, and system accessibility benchmarks (the plan should document phasing criteria, identify which projects are necessary to meet three-year requirements, and set appropriate benchmarks for longer-term efforts);

(4) Assignment of responsibility among public transportation service providers for the implementation of improvements and policies;

(5) Identification of coordination activities to improve the efficiency and effectiveness of existing services;

(6) Estimation of total costs and identification of sources of funding for implementing the improvements in the plan;

(7) Description of community participation in the development of the transition plan; and

(8) Identification of responses to substantive concerns raised during public hearings on the plan.

(d) *Timing.* (1) Transition plans shall be transmitted, in duplicate, for approval to UMTA as soon as practicable but not later than one year from the effective date of this part, except that for urbanized areas with inaccessible rapid rail systems, the plan shall be transmitted not later than 18 months after the effective date of this part. Upon request and an adequate showing of need, the one-year period may be extended to 18 months for urbanized areas with inaccessible rail systems other than rapid rail.

(2) Transition plans will be reviewed and approved or disapproved by UMTA as expeditiously as possible after they are received.

(3) The transition plan shall periodically be reappraised and refined, particularly to add details of accessibility improvements as their scheduled implementation dates are approached. Amendments to the plan resulting from reappraisals or refinements shall be submitted in the same manner as the original plan, with community participation and UMTA approval.

(e) *Transportation improvement program.* Annual elements of transportation improvement programs submitted for UMTA approval shall be consistent with the requirements of this part and with the local transition plan, once that plan has been approved by UMTA.

§ 27.105 Annual status report.

(a) In order to provide a basis upon which a determination of compliance can be made, each recipient of UMTA assistance (or MPO on its behalf), beginning in the year following submission of the transition plan, shall provide an annual status report on its compliance with this part. The report shall provide a summary of the recipient's accomplishments and activities for meeting the schedule of improvements in the area's approved transition plan.

(b) The first annual status report shall include a copy of the three compliance planning items listed in § 27.11(c)(3). Subsequent annual status reports shall reflect any changes made as a result of the requirement of § 27.11(c)(2)(v) for periodically reviewing and updating the compliance planning.

§ 27.107 Community participation.

(a) *General.* This section applies to recipients whose systems are covered by subpart E. Community involvement, particularly by handicapped persons or organizations representing handicapped persons, during the development of the transition plan and at least annually during its implementation, during significant changes in the transition plan, and at the time of any request for waiver is required.

(b) *Participation.* Agencies performing the planning, programming, and implementation activities required by this subpart shall use adequate citizen participation mechanisms or procedures during those activities. The mechanisms shall ensure continuing consultation, from initial planning through implementation, with handicapped persons, advocacy organizations of handicapped persons (where available), public and private social service agencies, public and private operators of existing transportation for handicapped persons, public and private transportation operators, and other interested and concerned persons.

(c) *Hearing.* A public hearing, with adequate notice, shall be held on the proposed transition plan and on significant changes to the plan, and a written response shall be provided for substantive concerns raised during the hearing. This response shall indicate whether the plan has been or will be changed to accommodate the concerns and the rationale for changing or not changing the plan.

§§ 27.109–119 [Reserved]

Subpart F—Enforcement

§ 27.121 Compliance information.

(a) *Cooperation and assistance.* The responsible Departmental official, to the fullest extent practicable, seeks the cooperation of recipients in securing compliance with this part and provides assistance and guidance to recipients to help them comply with this part.

(b) *Compliance reports.* Each recipient shall keep on file for one year all complaints of noncompliance received. A record of all such complaints, which may be in summary form, shall be kept for five years. Each recipient shall keep such other records and submit to the responsible Departmental official or his/her designee timely, complete, and accurate compliance reports at such times, and in such form, and containing such information as the responsible Department official may prescribe. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, the other recipient shall also submit compliance reports to the primary recipient so as to enable the primary recipient to prepare its report.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Departmental official or his/her designee during normal business hours to books, records, accounts, and other sources of information, and to facilities that are pertinent to compliance with this part. Where required information is in the exclusive possession of another agency or person who fails or refuses to furnish the information, the recipient shall so certify in its report and describe the efforts made to obtain the information. Considerations of privacy or confidentiality do not bar the Department from evaluating or seeking to enforce compliance with this part. Information of a confidential nature obtained in connection with compliance evaluation or enforcement is not disclosed by the Department, except in formal enforcement proceedings, where necessary, or where otherwise required by law.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such

information regarding the provisions of this regulation and its application to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Departmental official finds necessary to apprise them of the protections against discrimination provided by the Act and this part.

§ 27.123 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Departmental official or his/her designee, from time to time, reviews the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself/herself or any specific class of individuals to be harmed by failure to comply with this part may, personally or through a representative, file a written complaint with the responsible Departmental official. A Complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Departmental official or his/her designee.

(c) *Investigations.* The responsible Departmental official or his/her designee makes a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation includes, where appropriate, a review of the pertinent practices and policies of the recipient, and the circumstances under which the possible noncompliance with this part occurred.

(d) *Resolution of matters.* (1) If, after an investigation pursuant to paragraph (c) of this section, the responsible Departmental official finds reasonable cause to believe that there is a failure to comply with this part, the responsible Departmental official will inform the recipient. The matter is resolved by informal means whenever possible. If the responsible Departmental official determines that the matter cannot be resolved by informal means, action is taken as provided in § 27.125.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, the responsible Departmental official or his/her designee so informs the recipient and the complainant, if any, in writing.

(e) *Intimidating and retaliatory acts prohibited.* No employee or contractor of a recipient shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 504 of the Act or this part, or because the individual has made a complaint, testified, assisted, or participated in any manner in an investigation, hearing, or proceeding, under this part. The identity of complainants is kept confidential at their election during the conduct of any investigation, hearing or proceeding under this part. However, when such confidentiality is likely to hinder the investigation, the complainant will be advised for the purpose of waiving the privilege.

§ 27.125 Compliance procedure.

(a) *General.* If there is reasonable cause for the responsible Departmental official to believe that there is a failure to comply with any provision of this part that cannot be corrected by informal means, the responsible Departmental official may recommend suspension or termination of, or refusal to grant or to continue Federal financial assistance, or take any other steps authorized by law. Such other steps may include, but are not limited to:

(1) A referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractural undertaking; and

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

(b) *Refusal of Federal financial assistance.* (1) No order suspending, terminating, or refusing to grant or continue Federal financial assistance becomes effective until:

(i) The responsible Departmental official has advised the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means; and

(ii) There has been an express finding by the Secretary on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part.

(2) Any action to suspend, terminate, or refuse to grant or to continue Federal financial assistance is limited to the particular recipient who has failed to comply, and is limited in its effect to the particular program, or part thereof, in which noncompliance has been found.

(c) *Other means authorized by law.* No other action is taken until:

(1) The responsible Departmental official has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified by the responsible Departmental official of its failure to comply and of the proposed action;

(3) The expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period, additional efforts are made to persuade the recipient or other person to comply with the regulations and to take such corrective action as may be appropriate.

§ 27.127 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 27.125(b), reasonable notice is given by the responsible Departmental official by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice advises the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fixes a date not less than 20 days after the date of such notice within which the applicant or recipient may request a hearing; or

(2) Advises the applicant or recipient that the matter in question has been set for hearing at a stated place and time.

The time and place shall be reasonable and subject to change for cause. The complainant, if any, also is advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing constitutes a waiver of the right to a hearing under section 504 of the Act and § 27.125(b), and consent to the making of a decision on the basis of such information as may be part of the record.

(b) If the applicant or recipient waives its opportunity for a hearing, the responsible Departmental official shall notify the applicant or recipient that it has the opportunity to submit written information and argument for the record. The responsible Departmental official may also place written information and argument into the record.

(c) *Time and place of hearing.* Hearings are held at the office of the Department in Washington, D.C., at a time fixed by the responsible Departmental official unless he/she determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings are held before an Administrative Law Judge designated in accordance with 5 U.S.C. 3105 and 3344

(section 11 of the Administrative Procedure Act).

(d) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the responsible Departmental official have the right to be represented by counsel.

(e) *Procedures, evidence and record.* (1) The hearing, decision, and any administrative review thereof are conducted in conformity with sections 554 through 557 of Title 5 of the United States Code, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving notice subsequent to those provided for in paragraph (a) of this section, taking testimony, exhibits, arguments and briefs, requests for findings, and other related matters. The responsible Departmental official and the applicant or recipient are entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing. Any person (other than a government employee considered to be on official business) who, having been invited or requested to appear and testify as a witness on the government's behalf, attends at a time and place scheduled for a hearing provided for by this part may be reimbursed for his/her travel and actual expenses in an amount not to exceed the amount payable under the standardized travel regulations applicable to a government employee traveling on official business.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to cross examination are applied where reasonably necessary by the Administrative Law Judge conducting the hearing. The Administrative Law Judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record are open to examination by the parties and opportunity is given to refute facts and arguments advanced by either side. A transcript is made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions are based on the hearing record and written findings shall be made.

(e) *Consolidation or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this regulation with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under section 504 of the Act, the responsible Departmental official may, in agreement with such other departments or agencies, where applicable, provide for consolidated or joint hearings. Final decisions in such cases, insofar as this regulation is concerned, are made in accordance with § 27.129.

§ 27.129 Decisions and notices.

(a) *Decisions by Administrative Law Judge.* After the hearing, the Administrative Law Judge certifies the entire record including his recommended findings and proposed decision to the Secretary for a final decision. A copy of the certification is mailed to the applicant or recipient and to the complainant, if any. The responsible Departmental official and the applicant or recipient may submit written arguments to the Secretary concerning the Administrative Law Judge's recommended findings and proposed decision.

(b) *Final decision by the Secretary.* When the record is certified to the Secretary by the Administrative Law Judge, the Secretary reviews the record and accepts, rejects, or modifies the Administrative Law Judge's recommended findings and proposed decision, stating the reasons therefor.

(c) *Decisions if hearing is waived.* Whenever a hearing pursuant to § 27.125(b) is waived, the Secretary makes his/her final decision on the record, stating the reasons therefor.

(d) *Rulings required.* Each decision of the Administrative Law Judge or the Secretary contains a ruling on each finding or conclusion presented and specifies any failures to comply with this part.

(e) *Content of orders.* The final decision may provide for suspension or termination, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved. The decision may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended unless and until the recipient corrects its noncompliance and satisfies the Secretary that it will fully comply with this part.

(f) *Subsequent proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (e) of this section is restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (e) of this section may, at any time, request the responsible Departmental official to restore its eligibility, to receive Federal financial assistance. Any request must be supported by information showing that the applicant or recipient has met the requirements of subparagraph (1) of this paragraph. If the responsible Departmental official determines that those requirements have been satisfied, he/she may restore such eligibility, subject to the approval of the Secretary.

(3) If the responsible Departmental official denies any such request, the applicant or recipient may submit a request, in writing, for a hearing specifying why it believes the responsible Departmental official should restore it to full eligibility. It is thereupon given a prompt hearing, with a decision on the record. The applicant or recipient is restored to eligibility if it demonstrates to the satisfaction of the Secretary at the hearing that it satisfied the requirements of paragraph (f)(1) of this section.

(4) The hearing procedures of § 27.127(b)–(c) and paragraphs (a)–(d) of this section apply to hearings held under subparagraph (3) of this paragraph.

(5) While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) of this section shall remain in effect.

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Dr. Clark

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

April 19, 1979

MEMORAMDUM TO: PRESIDENTS OF POSTSECONDARY EDUCATION INSTITUTIONS
CHIEF ADMINISTRATIVE OFFICERS OF LOCAL EDUCATION AGENCIES

SUBJECT: Vocational Education Guidelines

Enclosed is a copy of the Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs.

The Guidelines have been issued to explain the civil rights responsibilities of State, local, and college administrators who conduct vocational education programs with the support of Federal financial assistance. They take effect immediately.

The Guidelines were prepared in cooperation with the Bureau of Occupational and Adult Education (BOAE) of the U.S. Office of Education. Also, they have been extensively modified to reflect many of your suggestions received through comments on the proposed Guidelines. We are grateful for your role in the project.

This Office and the Bureau of Occupational and Adult Education are preparing an implementation plan that will include the issuance of a memorandum on the preparation of Methods of Administration, the training of State vocational education personnel, and technical assistance to State agencies.

Also enclosed are copies of two groups of policy interpretations issued by this Office. The first, dated May 1, 1978, resolves issues arising under Title IX of the Education Amendments of 1972 and Section 504 of the Rehabilitation Act of 1973. The second, dated August 14, 1978, resolves issues arising under Section 504.

Further information about the Guidelines may be obtained from Mr. David Gerard of this Office. His telephone number has been changed from that in the Guidelines. It is now (202) 245-6118.

David S. Tatel
Director
Office for Civil Rights

Enclosures

June 1975

AFFIRMATIVE ACTION STATEMENT

The Department of Economics and Business sent announcements of vacant positions to approximately 400 departments of economics, agricultural economics and schools of business. In addition the American Economic Association has started publishing a bimonthly listing of jobs entitled, "Job Opportunities for Economists." This latter publication is widely distributed and led to a very large number of applications. We did send announcements of job openings to predominantly black schools listing economists on their faculty. We received approximatley 230 applications for our positions with eight female applicants.

We filled six positions with white males and two positions with white females this year. Our remaining vacancies (5) are in the School of Agriculture and Life Sciences. To this point, we have been unable to obtain applications from females or blacks for any of these positions. In fact, we have been unable to obtain many applications of any kind for these positions.

For the last SPA position filled, we had nine applications from white females only. We do have three black secretaries in the Department.

June 5, 1975

Department of Veterinary Science
Recruitment for 1975-1976
Narrative Report

The Department of Veterinary Science has filled an open position effective July 1, 1975. The following is an outline narrative of the position and recruitment procedures.

I. Position Number and Rank

05612
Associate Professor

II. Position Description (as advertised)*

Positions were advertised in the following:

Journal of the American Veterinary Medical Association
A.V.M.A. Placement Service Bulletin
Journal American College of Veterinary Toxicologists
Journal of Veterinary Pathology
Health Sciences Placement Service from the Center of Health Manpower Information Systems, University of Minnesota

*Examples enclosed as Attachment #1

III. Consideration and Review of Candidates

Curriculum vitae and other materials submitted by candidates were examined independently by members of a departmental screening committee. Each ranked candidates on the basis of (1) professional qualifications, (2) experience and competence demonstrated, (3) compatibility and/or support by the candidate's area of interest to existing faculty and departmental objectives, and (4) an estimate of the candidate's potential for outstanding performance and contribution.

The screening committee presented and discussed their reviews collectively with the Department Head and recommendations were made for action. Attachment #2 is a summary list of candidates and actions.

Among the 4 candidates interviewed were 3 white males and 1 black male. The position was offered to a white male who declined because of insufficient salary and academic rank. It was subsequently offered to a second white male who accepted.

Respectfully submitted,

T. M. Curtin

Terrence M. Curtin, DVM, PhD
Professor and Head

Attachments #1 and #2

We are now in the third year of our revised 3 1/2-year Affirmative Action Program for the period July 1, 1983 - December 31, 1986 under Executive Order 11246. This year also is the last recruitment year in obtaining the goals setforth in the Plan for this specific period of time. The combined goals for Blacks in Administratvie and Tenured/Tenure Track categories by December 31, 1986, is 53. At present, the number is 42, representing no increase over last year. We added three (3) members and lost three (3).

The combined goals for women in the administrative and Tenured/Tenure Track categories is 184. At present, the number of women in these combined categories is 190 representing a net increase of seven (7) over last year. As noted for women, we have exceeded our minimum goal; however, we shall continue our effort in the recruitment and hiring of more women faculty.

I wish to appeal to you to help us meet our goals in the hiring of Black faculty. We feel that many of our departments are quite committed to Affirmative Action, not only in the letter of the law but in the spirit of the law as well. The commitment is reflected in the effort that members of various departments are putting in their searches. However, we would hope that next year we could report that we have met our goals.

THE UNIVERSITY OF NORTH CAROLINA

General Administration

P. O. BOX 2688

CHAPEL HILL 27514

WILLIAM FRIDAY
President

TELEPHONE: (919) 933-6981

July 8, 1976

MEMORANDUM

TO: The Chancellors

FROM: William Friday

SUBJECT: Affirmative Action Regulations: Veterans

On June 25, 1976, the Office of Federal Contract Compliance Programs of the U. S. Department of Labor published a regulation implementing the Vietnam Veteran's Readjustment Assistance Act of 1974, which amended the 1972 Act of the same title, which requires federal contractors to take affirmative action regarding employment of disabled veterans, and of veterans of the "Vietnam era" holding "other than a dishonorable discharge." The regulation may be found at 41 Federal Register 26385 et seq. and will be codified at 41 Code of Federal Regulations Part 60-250. This memorandum briefly describes the regulation, a copy of which is attached, so that you may be in a position to implement it when it takes effect on July 26, 1976.

As noted above, the regulation applies to two overlapping but different groups of veterans: those with service-connected disabilities, and those of the "Vietnam era" whose discharges were under other than dishonorable conditions. As the Preamble to the regulation acknowledges, the requirements for disabled veterans closely parallel those set out for handicapped workers generally in the Department's regulation implementing Section 503 of the Rehabilitation Act of 1973, published on April 16, 1976. (These latter rules were provided you by memorandum of April 29.) Among the most significant of these common requirements are those to review job criteria and practices for their effects upon the disabled and handicapped, and to make "reasonable accommodation" to particular needs of such workers.

The regulation sets out a number of procedural obligations similar to those under Executive Order 11246, including maintenance of affirmative action plans within 120 days of the rules' effective date (i.e., November 23, 1976) if an institution holds a federal contract of $50,000 or more. The plans may either be integrated into those required under Executive Order 11246 and the Rehabilitation Act, or maintained separately from those plans. Two requirements have particular import for our institutions:

1. Job openings which will not be filled by considering only incumbent employees must be advertised with the State Employment Service. However, public employers are exempt from certain reporting requirements, and educational institutions need not advertise openings which will be restricted to their students (section 60-250.4). Richard Robinson's memorandum to you on November 25, 1975, discusses various requirements for listing with the State Employment Service, including this one, and should be referred to where your institution has not developed procedures agreeable to the Service.

2. The regulation requires deferral of complaints for 60 days to internal grievance procedures where such exist [section 60-250.26(b)]. The grievance procedures established under the State Personnel Act and the University Code should provide forums by which complaints are deferred for institutional consideration under this requirement.

The major substantive requirement for "Vietnam era" veterans is that consideration of service records be limited to those portions of the record which are "relevant to the specific job qualifications for which the veteran is being considered." [Section 60-250.6(b)]. The procedures by which this limitation is observed should be specific, and "must be designed so as to facilitate review of the implementation of this requirement by the contractor or the government."

Attachment

federal register

FRIDAY, JUNE 25, 1976

PART IV:

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

■

AFFIRMATIVE ACTION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

Title 41—Public Contracts and Property Management

CHAPTER 60—OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, EQUAL EMPLOYMENT OPPORTUNITY, DEPARTMENT OF LABOR

PART 60–250—AFFIRMATIVE ACTION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

Revision

On December 3, 1974, Congress enacted the Vietnam Era Veteran's Readjustment Assistance Act of 1974, which amends the Vietnam Era Veteran's Readjustment Assistance Act of 1972. The amendments augment the mandatory job listing requirement for government contractors in the 1972 Act by requiring government contractors to take affirmative action to employ and advance in employment disabled veterans and veterans of the Vietnam era. Contractors continue to be required to list all their job openings with appropriate state employment services and to file quarterly reports regarding their employment of disabled veterans and veterans of the Vietnam era. The amended Act also raises the jurisdictional amount of covered contracts to $10,000. Responsibility for administration and enforcement of § 402 of the Act is delegated to the Department of Labor.

To implement the amendments contained in the 1974 Act, the Department of Labor on October 22, 1975, proposed amendments to 41 CFR Part 50–250 (now redesignated as 41 CFR Part 60–30. Proposed amendments had been published earlier, on February 18, 1975, (40 FR 6982) regarding the mandatory listing requirement and jurisdictional amount. The Department has received and considered comments on these proposals. These regulations implementing the Vietnam Era Veterans Readjustment Assistance Act of 1974 are substantially similar to regulations which amended 20 CFR Part 741, (redesignated 41 CFR Part 60–741) implementing section 503 of the Rehabilitation Act of 1973 published on April 16, 1976. Since 41 CFR Part 60–741 is applicable to all handicapped individuals, both veterans and nonveterans, those regulations are applicable to a number of the persons also covered under this 41 CFR Part 60–250, but will not be applicable to veterans generally. Some of those provisions, therefore, were not repeated in this regulation because they do not relate to or have particular significance for veterans. For example, this regulation does not repeat the suggestion contained in 41 CFR Part 60–741 that contractors use photographs of handicapped persons in their brochures and advertising, since veterans would not be identifiable as such in photographs, but most handicapped persons are clearly identifiable. Thus where there are distinctions between the two regulations, it is in recognition of a somewhat different universe served by each statute. Accordingly, this regulation:

1. Adds definitions of disabled veterans and veterans of the Vietnam era. Although it is not expected to occur often, it is possible that the different statutory definitions of disabled veteran and handicapped individual could result in disabled veterans being covered under one act but not the other, depending upon the nature of the disability and the percentage of disability;

2. Expands the affirmative action clause to incorporate the mandatory listing requirements originally published in the Manpower Administration's (now known as the Employment and Training Administration) proposed regulations on February 18, 1975 (40 FR 6982);

3. Incorporates particular affirmative action steps applicable to recruiting disabled veterans and veterans of the Vietnam era;

4. Limits the uses for which an employer may consider a covered veteran's military papers to those which are job related;

5. Specifies in accordance with the Vietnam Era Veterans' Readjustment Assistance Act of 1974 that veterans' complaints shall be filed with the Veterans' Employment Service;

6. Requires State employment services to give veterans priority in referral in accordance with 38 USC 2012; and

7. Requires contractors to retain at each establishment records of jobs listed with State employment services and to file quarterly reports regarding their employment practices.

In addition, this regulation differs from the existing mandatory listing regulations at 41 CFR Part 50–250 and the proposal of February 18, 1975, by covering subcontractors below the first tier, and by omitting the section in the original proposal to require Federal departments and agencies to list their job openings. That section will be republished separately. The change in first-tier coverage is based upon the legislative history, which specifically states that all subcontractors are intended to be covered. See Cong. Rec., Oct. 11, 1974, S. 19037.

In view of the fact that responsibility for enforcement of section 402 of the Vietnam Era Veterans Readjustment Assistance Act has been placed in the Office of Federal Contract Compliance Programs and all other OFCCP regulations are contained in Title 41 CFR, Chapter 60, for administrative convenience and clarity the regulations governing the affirmative action obligations of contractors and subcontractors for disabled veterans and veterans of the Vietnam Era formerly found in 41 CFR Part 50–250 are redesignated as Part 60–250 of 41 CFR and are revised as follows:

Subpart A—Preliminary Matters, Affirmative Action Clause, Compliance

Sec.
60–250.1 Purpose and application.
60–250.2 Definitions.
60–250.3 Coverage and waivers.
60–250.4 Affirmative action clause.
60–250.5 Applicability of the affirmative action program requirement.
60–250.6 Affirmative action policy, practices and procedures.
60–250.7 Determination of disability.
60–250.8 Reserve.
60–250.9 Labor unions and recruiting and training agencies.

Subpart B—General Enforcement and Complaint Procedure

60–250.20 Subcontracts.
60–250.21 Adaptation of language.
60–250.22 Incorporation by reference.
60–250.23 Incorporation by operation of the Act and agency regulations.
60–250.24 Duties of agencies.
60–250.25 Evaluations by the Director.
60–250.26 Complaint procedures.
60–250.27 Noncompliance with the affirmative action clause.
60–250.28 Actions for noncompliance.
60–250.29 Formal hearings.
60–250.30 Notification of agencies.
60–250.31 Contractor ineligibility list.
60–250.32 Disputed matters related to the affirmative action program.
60–250.33 Responsibilities of state employment services.

Subpart C—Ancillary Matters

60–250.50 Reinstatement of ineligible contractors and subcontractors.
60–250.51 Intimidation and interference.
60–250.52 Recordkeeping.
60–250.53 Access to records of employment.
60–250.54 Rulings and interpretations.

AUTHORITY: Sec. 503(a), Pub. Law 92–540, 86 Stat. 1097 (38 U.S.C. 2012), as amended by Sec. 402, Pub. Law 93–508, 88 Stat. 1593 (38 U.S.C. 2012).

Subpart A—Preliminary Matters, Affirmative Action Clause, Compliance

§ 60–250.1 Purpose and application.

The purpose of the regulations in this Part is to assure compliance with section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, which requires government contractors and subcontractors to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era. The regulations in this Part apply to all government contracts and subcontracts for the furnishing of supplies or services or for the use of real or personal property (including construction) for $10,000 or more.

§ 60–250.2 Definitions.

"Act" means the Vietnam Era Veterans Readjustment Assistance Act of 1974, Public Law 93–508, as it amends 38 USC 2012, the Vietnam Era Veterans Readjustment Assistance Act of 1972.

"Affirmative action clause" means the contract provisions set forth in § 60–250.4.

"Agency" means any contracting and/or compliance agency of the government.

"Assistant Secretary" means the Assistant Secretary of Labor for Employment Standards or his or her designee.

"Compliance agency" means any agency which the Director requests to conduct investigations and such other responsibilities in connection with the administration of the Act as the Director may request, as appropriate, including

the responsibility to ensure that contractors are fully cognizant of their obligations under the Act and this Part and to provide the Director with any information which comes to its attention that the contractor is not in compliance with the Act or this Part.

"Construction" means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

"Contract" means any government contract.

"Contracting agency" means any department, agency, establishment or instrumentality of the United States, including any wholly owned government corporation, which enters into contracts.

"Contractor" means, unless otherwise indicated, a prime contractor or subcontractor.

"Director" means the Director of the Office of Federal Contract Compliance Programs of the United States Department of Labor.

"Disabled veteran" means a person entitled to disability compensation under laws administered by the Veterans Administration for disability rated at 30 per centum or more, or a person whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty.

"Government" means the government of the United States of America.

"Government contract" means any agreement or modification thereof between any contracting agency and any person for the furnishing of supplies or services or for the use of real or personal property including lease arrangements. The term "services", as used in this section includes, but is not limited to the following services: utility, construction, transportation, research, insurance, and fund depository, irrespective of whether the government is the purchaser or seller. The term "government contract" does not include (1) agreements in which the parties stand in the relationship of employer and employee, and (2) federally-assisted contracts.

"Modification" means any alteration in the terms and conditions of a contract, including supplemental agreements, amendments, and extensions.

"Person" means any natural person, corporation, partnership or joint venture, unincorporated association, state or local government, and any agency, instrumentality, or subdivision of such a government.

"Prime contractor" means any person holding a contract, and, for the purposes of Subpart B of this Part, includes any person who has held a contract subject to the Act.

"Qualified disabled veteran" means a disabled veteran as defined in § 60-250.2 who is capable of performing a particular job, with reasonable accommodation to his or her disability.

"Recruiting and training agency" means any person who refers workers to any contractor or subcontractor, or who provides or supervises apprenticeship or training for employment by any contractor or subcontractor.

"Rules, regulations, and relevant orders of the Secretary of Labor" as used in paragraph (1) of the affirmative action clause means rules, regulations, and relevant orders of the Secretary of Labor or his or her designee issued pursuant to the Act.

"Secretary" means the Secretary of Labor, U.S. Department of Labor.

"Subcontract" means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the furnishing of supplies or services or for the use of real or personal property, including lease arrangements which, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

"Subcontractor" means any person holding a subcontract and, for the purpose of Subpart B of this Part, any person who has held a subcontract subject to the Act.

"United States" as used herein shall include the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, the Panama Canal Zone, American Samoa and the Trust Territory of the Pacific Islands.

"Veteran of the Vietnam era" means a person (1) who (i) served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964 and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge, or (ii) was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964 and May 7, 1975, and (2) who was so discharged or released within 48 months preceding the alleged violation of the Act, the affirmative action clause, and/or the regulations issued pursuant to the Act.

§ 60-250.3 Coverage and waivers.

(a) *General.*—(1) Transactions for less than $10,000. Contracts and subcontracts for less than $10,000 are not covered by the Act. No agency, contractor or subcontractor shall procure supplies or services in less than usual quantities to avoid the applicability of the affirmative action clause.

(2) Contracts and subcontracts for indefinite quantities. With respect to indefinite delivery-type contracts and subcontracts (including, but not limited to, open end contracts, requirement-type contracts, Federal Supply Schedule contracts, "call-type" contracts, and purchase notice agreements), the affirmative action clause shall be included unless the contracting agency has reason to believe that the amount to be ordered in any year under such contract will be less than $10,000. The applicability of the affirmative action clause shall be determined at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the affirmative action clause shall be applied to such contract whenever the amount of a single order is $10,000 or more. Once the affirmative action clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered in any year.

(3) Work outside the United States. The requirements of the affirmative action clause are waived with respect to contracts and subcontracts with regard to work performed outside the United States by employees who were not recruited within the United States.

(4) Contracts with state or local governments. The requirements of the affirmative action clause in any contract or subcontract with a state or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract.

(5) Facilities not connected with contracts. The Director may waive the requirements of the affirmative action clause with respect to any of a prime contractor's or subcontractor's facilities which he or she finds to be in all respects separate and distinct from activities of the prime contractor or subcontractor related to the performance of the contract or subcontract, provided that he or she also finds that such a waiver will not interfere with or impede the effectuation of the Act. Such waivers shall be considered only upon the request of the contractor or subcontractor.

(b) *Waivers.*—(1) *Specific contracts and classes of contracts.* The head of an agency, with the concurrence of the Director, may waive the application to any contract or subcontract of any part of or all the affirmative action clause when he or she deems that special circumstances in the national interest so require. The agency head, with the concurrence of the Director, may also grant such waivers to groups or categories of contracts or subcontracts of the same type where it is (i) in the national interest, (ii) found impracticable to act upon each request individually, and (iii) where such waiver will substantially contribute to convenience in administration of the Act.

(2) *National security.*—Any requirement set forth in the regulations in this Part shall not apply to any contract or subcontract whenever the head of the contracting agency determines that such contract or subcontract is essential to the national security and that its award

without complying with such requirements is necessary to the national security. Upon making such a determination, the head of the agency will notify the Director in writing within 30 days.

(c) *Withdrawal of waiver.*—When a waiver has been granted for any class of contracts or subcontracts under this section other than contracts granted waivers under paragraph (b)(2) of this section, the Director may withdraw the waiver for a specific contract or subcontract or group of contracts or subcontracts to be awarded, when in his or her judgment such action is necessary or appropriate to achieve the purposes of the Act. The withdrawal shall not apply to contracts or subcontracts awarded prior to the withdrawal, except that in procurements entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawal shall not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of the bids.

§ 60–250.4 Affirmative action clause.

Each agency and each contractor and subcontractor shall include the following affirmative action clause in each of its covered government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract):

AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

(a) The contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam Era in gard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans status in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(b) The contractor agrees that all suitable employment openings of the contractor which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one wherein the contract is being performed but excluding those of independently operated corporate affiliates, shall be listed at an appropriate local office of the State employment service system wherein the opening occurs. The contractor further agrees to provide such reports to such local office regarding employment openings and hires as may be required.

State and local government agencies holding Federal contracts of $10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service, but are not required to provide those reports set forth in paragraphs (d) and (e).

(c) Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment urce or effort and shall involve the normal ligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive Orders or regulations regarding nondiscrimination in employment.

(d) The reports required by paragraph (b) of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the contractor has more than one hiring location in a State, with the central office of that State employment service. Such reports shall indicate for each hiring location (1) the number of individuals hired during the reporting period, (2) the number of nondisabled veterans of the Vietnam era hired, (3) the number of disabled veterans of the Vietnam era hired, and (4) the total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 USC 1787. The contractor shall submit a report within 30 days after the end of each reporting period wherein any performance is made on this contract identifying data for each hiring location. The contractor shall maintain at each hiring location copies of the reports submitted until the expiration of one year after final payment under the contract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the contracting officer or of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment and placement.

(e) Whenever the contractor becomes contractually bound to the listing provisions of this clause, it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the contractor is contractually bound to these provisions and has so advised the State system, there is no need to advise the State system of subsequent contracts. The contractor may advise the State system when it is no longer bound by this contract clause.

(f) This clause does not apply to the listing of employment openings which occur and are filled outside of the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(g) The provisions of paragraphs (b), (c), (d) and (e) of this clause do not apply to openings which the contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer-union arrangement for that opening.

(h) As used in this clause: (1) "All suitable employment openings" includes, but is not limited to, openings which occur in the following job categories: production and nonproduction; plant and office; laborers and mechanics; supervisory and nonsupervisory; technical; and executive, administrative, and professional openings as are compensated on a salary basis of less than $25,000 per year. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment. It does not include openings which the contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement nor openings in an educational institution which are restricted to students of that institution. Under the most compelling circumstances an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be for the best interest of the Government.

(2) "Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

(3) "Openings which the contractor proposes to fill from within his own organization" means employment openings for which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries, and the parent companies) and includes any openings which the contractor proposes to fill from regularly established "recall" lists.

(4) "Openings which the contractor proposes to fill pursuant to a customary and traditional employer-union hiring arrangement" means employment openings which the contractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the contractor and representatives of his employees.

(i) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(j) In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations relevant orders of the Secretary of Labor issued pursuant to the Act.

(k) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notice shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era for employment, and the rights of applicants and employees.

(l) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of the Vietnam Era Veterans Readjustment Assistance Act, and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam Era.

(m) The contractor will include the provisions of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

§ 60–250.5 Applicability of the affirmative action program requirement.

(a) Within 120 days of the commencement of a contract every government contractor or subcontractor holding a contract of $50,000 or more and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices

and procedures in accordance with § 60-250.6 of this Part. This program may be integrated into or kept separate from other affirmative action programs of the contractor. Contractors presently holding government contracts shall update their affirmative action programs within 120 days of the effective date of this Part.

(b) The affirmative action program shall be reviewed and updated annually. If there are any significant changes in procedures, rights or benefits as a result of the annual updating, those changes shall be communicated to employees and applicants for employment.

(c) The full affirmative action program shall be available for inspection to any employee or applicant for employment upon request. The location and hours during which the program may be obtained shall be posted at each facility.

(d) The contractor shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program to identify themselves to the contractor. The invitation shall state that the information is voluntarily provided, that it will be kept confidential, 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 the Act and Regulations in this part. If an applicant or employee so identifies himself or herself, the contractor should also seek the advice of the applicant or employee regarding proper placement and appropriate accommodation (an acceptable form for such an invitation is set forth in Appendix A attached). Nothing in this section shall preclude an employee from informing a contractor at a future time of his or her desire to benefit from this program. Nothing in this section shall relieve a contractor from liability for discrimination under the Act.

§ 60-250.6 Affirmative action policy, practices and procedures.

(a) *General requirements.*—Under the affirmative action obligation imposed by the Vietnam Era Veterans Readjustment Assistance Act of 1974, contractors are required to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era at all levels of employment, including the executive level. Such action shall apply to all employment practices, including, but not limited to, the following: hiring, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship and on-the-job training programs under 38 USC 1787.

(b) *Proper consideration of qualifications.*—Contractors shall review their personnel processes to determine whether their present procedures assure careful, thorough and systematic consideration of the job qualifications of known disabled veteran applicants and Vietnam era veteran applicants for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. In determining the qualifications of a covered veteran, the contractor shall consider only that portion of the military record, including discharge papers, relevant to the specific job qualifications for which the veteran is being considered. To the extent that it is necessary to modify their personnel procedures, contractors shall include the development of new procedures for this purpose in their affirmative action program required under this Part. These procedures must be designed so as to facilitate a review of the implementation of this requirement by the contractor or the government. (The appendix attached is an example of an appropriate set of procedures. The procedures in appendix B are not required and contractors may develop other procedures which are appropriate to their circumstances.)

(c) *Physical and mental qualifications.*—(1) The contractor shall provide in its affirmative action program, and shall adhere to, a schedule for the review of all physical or mental job qualification requirements to ensure that, to the extent qualification requirements tend to screen out qualified disabled veterans, they are job related and are consistent with business necessity and the safe performance of the job.

(2) Whenever a contractor applies physical or mental job qualification requirements in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion or training, to the extent that qualification requirements tend to screen out qualified disabled veterans, the requirements shall be related to the specific job or jobs for which the individual is being considered and shall be consistent with business necessity and the safe performance of the job. The contractor shall have the burden to demonstrate that it has complied with the requirements of this paragraph.

(3) Nothing in this section shall prohibit a contractor from conducting a comprehensive medical examination prior to employment provided that the results of such an examination shall be used only in accordance with the requirements of this section. Whenever a contractor inquires into an applicant's or employee's physical or mental condition or conducts a medical examination prior to employment or change in employment status information obtained in response to such inquiries or examination shall be kept confidential except that:

(i) Supervisors and managers may be informed regarding restrictions on the work or duties of disabled veterans and regarding accommodations; and

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

(iii) Government officials investigating compliance with the Act shall be informed.

(d) *Accommodation to physical and mental limitations of employees.*—A contractor must make a reasonable accommodation to the physical and mental limitations of a disabled veteran unless the contractor can demonstrate that such an accommodation would impose an undue hardship on the conduct of the contractor's business. In determining the extent of a contractor's accommodation obligations, the following factors among others may be considered: (1) business necessity and (2) financial costs and expenses.

(e) *Compensation.*—In offering employment or promotions to disabled veterans, and veterans of the Vietnam era, the contractor may not reduce the amount of compensation offered because of any disability income, pension or other benefit the applicant or employee receives from another source.

(f) *Outreach, positive recruitment, and external dissemination of policy.*—Contractors shall review their employment practices to determine whether their personnel programs provide the required affirmative action for employment and advancement of qualified disabled veterans and veterans of the Vietnam era. Based upon the findings of such reviews, contractors shall undertake appropriate outreach and positive recruitment activities, such as those listed below. It is not contemplated that contractors will necessarily undertake all the listed activities or that their activities will be limited to those listed. The scope of a contractor's efforts shall depend upon all the circumstances, including the contractor's size and resources and the extent to which existing employment practices are adequate.

(1) The contractor should develop internal communication of its obligation to engage in affirmative action efforts to employ qualified disabled veterans and veterans of the Vietnam era in such a manner as to foster understanding, acceptance and support among the contractor's executive, management, supervisory and all other employees and to encourage such persons to take the necessary action to aid the contractor in meeting this obligation.

(2) The contractor should develop reasonable internal procedures to ensure that its obligation to engage in affirmative action to employ and promote qualified disabled veterans and veterans of the Vietnam era is being fully implemented.

(3) The contractor should periodically inform all employees and prospective employees of its commitment to engage in affirmative action to increase employment opportunities for qualified disabled veterans and veterans of the Vietnam era.

(4) The contractor should enlist the assistance and support of all recruiting sources including as follows:

(i) The local Veterans Employment Representative or his or her designee in the State Employment Service Office nearest each establishment where hiring takes place to recruit job ready veterans and to develop on-the-job training opportunities for covered veterans wherever feasible;

(ii) The eVterans Administration Regional Office nearest each establishment to develop on-the-job training opportu-

nities for covered veterans, and to recruit job ready veterans.

(iii) The office of the National Alliance of Businessmen nearest each establishment where hiring takes place in order to cooperate in the Jobs for Veterans' Program;

(iv) The veterans' counselors and coordinators ("Vet-Reps" and "VCIPS") on college campuses for the recruitment of covered veterans;

(v) The service officers of the national veterans groups active in the area of each establishment where hiring takes place for the recruitment of covered veterans; and

(vi) Local veterans' groups and veterans' service centers in the area of each establishment where employment services are performed near major cities, for the recruitment of covered veterans.

(5) The contractor should establish meaningful contacts with appropriate veterans' service organizations which service disabled veterans or veterans of the Vietnam era, for such purposes as advice, technical assistance and referral of potential employees. Technical assistance from the resources listed in this paragraph may consist of advice on proper placement, recruitment, training and accommodations contractors may undertake, but no such resource providing technical assistance shall have the authority to approve or disapprove the acceptability of affirmative action programs.

(6) The contractor should review employment records to determine the availability of promotable and transferrable qualified known disabled veterans and veterans of the Vietnam era presently employed, and to determine whether their present and potential skills are being fully utilized or developed.

(7) The contractor should send written notification of company policy to all subcontractors, vendors and suppliers, requesting appropriate action on their part.

(8) The contractor should consider all qualified disabled veterans and veterans of the Vietnam era not currently in the workforce having requisite skills who can be recruited through affirmative action measures.

(g) *Internal dissemination of policy.* A strong outreach program will be ineffective without adequate internal support from supervisory and management personnel and other employees. In order to assure greater employee cooperation and participation in the contractor's efforts, the contractor should adopt, implement and disseminate this policy internally as follows:

(1) Include it in the contractor's policy manual.

(2) Publicize it in the company newspaper, magazine, annual report and other media.

(3) Conduct special meetings with executive, management, and supervisory personnel to explain the intent of the policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude.

(4) Schedule special meetings with all employees to discuss policy and explain individual employee responsibilities.

(5) Discuss the policy thoroughly in both employee orientation and management training programs.

(6) Meet with union officials to inform them of the contractor's policy, and request their cooperation.

(7) Include nondiscrimination clauses in all union agreements, and review all contractual provisions to ensure they are nondiscriminatory.

(8) Include articles on accomplishments of disabled veterans and veterans of the Vietnam era in company publications.

(9) Post the policy on company bulletin boards, including a statement that employees and applicants are protected from coercion, intimidation, interference or discrimination for filing a complaint or assisting in an investigation under the Act.

(h) *Responsibility for implementation.*—An executive of the contractor should be designated as director or manager of company affirmative action activities under these regulations. His or her identity should appear on all internal and external communications regarding the company's affirmative action programs. This executive should be given necessary top management support and staff to manage the implementation of this program, including the following activities:

(1) Develop policy statements, affirmative action programs, and internal and external communication techniques. The latter techniques should include regular discussions with local managers, supervisors and employees to be certain the contractor's policies are being followed. In addition, supervisors should be advised that:

(i) Their work performance is being evaluated on the basis of their affirmative action efforts and results, as well as other criteria.

(ii) The contractor is obligated to prevent harassment of employees placed through affirmative action efforts, as set forth in § 60-250.51.

(2) Identify problem areas in conjunction with line management and known disabled veterans, in the implementation of the affirmative action programs, and develop solutions. This is particularly important for the accommodations requirements.

(3) Design and implement audit and reporting systems that will:

(i) Measure effectiveness of the contractor's programs.

(ii) Indicate need for remedial action.

(iii) Determine the degree to which the contractor's objectives have been attained.

(iv) Determine whether known disabled veterans and veterans of the Vietnam era have had the opportunity to participate in all company sponsored educational, training, recreational and social activities.

(v) Ensure that each location is in compliance with the Act and the regulations in this Part.

(4) Serve as liaison between the contractor and enforcement agencies.

(5) Serve as liaison between the contractor and organizations of and for disabled veterans and veterans of the Vietnam era, and arrange for the active involvement by company representatives in the community service programs of local organizations of and for disabled veterans and veterans of the Vietnam era.

(6) Keep management informed of the latest developments in the entire affirmative action area.

(7) Arrange for career counseling for known disabled veterans and veterans of the Vietnam era.

(i) *Development and execution of affirmative action programs.*—(1) Job qualification requirements reviewed pursuant to paragraph (c) of this section should be made available to all members of management involved in the recruitment, screening, selection, and promotion process.

(2) The contractor should evaluate the total selection process including training and promotion to ensure freedom from stereotyping disabled veterans and veterans of the Vietnam era in a manner which limits their access to all jobs for which they are qualified.

(3) All personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes should be carefully selected and trained to ensure that the commitments in its affirmative action program are implemented.

(4) Formal briefing sessions should be held, preferably on company premises, with representatives from recruiting sources. Plant tours, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature should be an integral part of the briefings. Formal arrangements should be made for referral of applicants, follow up with sources, and feedback on disposition of applicants.

(5) A special effort should be made to include qualified disabled veterans or veterans of the Vietnam era on the personnel relations staff.

(6) Active participation in veterans "job fairs" is desirable.

(7) Recruiting efforts at all educational institutions should incorporate special efforts to reach disabled veterans and veterans of the Vietnam era.

(8) An effort should be made to participate in workstudy programs with Veteran's Administration rehabilitation facilities which specialize in training or educating disabled veterans.

(9) The contractor should use all available resources to continue or establish Federally-assisted apprenticeship and on-the-job training programs under 38 USC 1787.

§ 60-250.7 Determination of disability.

Any disabled veteran filing an administrative complaint with the Veterans' Employment Service under this part shall submit documentation from the Veterans Administration or military service from

which the person was discharged or released which indicates his or her disability. Such documentation shall be updated within one year prior to filing the complaint.

§ 60–250.8 [Reserved]

§ 60–250.9 Labor unions and recruiting and training agencies.

(a) Whenever performance in accordance with the affirmative action clause or any matter contained in the regulations in this Part may necessitate a revision of a collective bargaining agreement, the labor union or unions which are parties to such agreements shall be given an adequate opportunity to present their views to the agency, or to the Director.

(b) The Director shall use his or her best efforts, directly or through contractors, subcontractors, local officials, the Veterans Administration, veterans' organizations and all other available instrumentalities, to cause any labor union, recruiting and training agency or other representative of workers who are or may be engaged in work under contracts and subcontracts to cooperate with, and to assist in, the implementation of the purposes of the Act.

Subpart B—General Enforcement and Complaint Procedure

§ 60–250.20 Subcontracts.

Each nonexempt prime contractor and subcontractor shall include the affirmative action clause prescribed in § 60–250.4 in each of their nonexempt subcontracts. The clause may be incorporated by reference in accordance with § 60–250.22.

§ 60–250.21 Adaptation of language.

Such necessary changes in language may be made to the affirmative action clause (see § 60–250.4) as shall be appropriate to identify properly the parties and their undertakings.

§ 60–250.22 Incorporation by reference.

The affirmative action clause and the regulations contained in this Part may be incorporated by reference in all contracts and subcontracts.

§ 60–250.23 Incorporation by operation of the Act and agency regulations.

By operation of the Act, the affirmative action clause shall be considered to be a part of every contract and subcontract required by the Act and the regulations in this Part to include such a clause, whether or not it is physically incorporated in such contracts and whether or not there is a written contract between the agency and the contractor.

§ 60–250.24 Duties of agencies.

(a) *General responsibility.*—Each agency shall cooperate with the Director in the performance of his or her responsibilities under the Act. Such cooperation shall include the responsibility to ensure that contractors are fully cognizant of their obligations under the Act and this Part, to provide the Director with any information which comes to its attention that the contractor is not in compliance with the Act or this Part, and to take such actions for noncompliance as set forth in § 60–250.28 as may be ordered by the Director.

(b) *Designation of agency official.*—The head of each agency, or his or her designee, shall identify and submit to the Director the name, address and telephone number of the official within the agency who is primarily responsible for implementation of this program within the agency.

§ 60–250.25 Evaluations by the Director.

The Director shall be primarily responsible for undertaking such investigations of complaints and other matters as well as evaluations of contractor and agency performance as may be necessary to assure that the purposes of The Vietnam Veteran's Readjustment Assistance Act, as amended are being effectively carried out.

§ 60–250.26 Complaint procedures.

(a) *Place and time for filing.* Any applicant for employment with a contractor or any employee of a contractor may, personally or by an authorized representative, file a written complaint with the Veteran's Employment Service of the Department of Labor through the Local Veteran's Employment Representative (LVER) or his designee at the local State employment office, alleging a violation of the Act or the regulations in this Part. Local Veteran's Employment Representatives (LVERs) will assist veterans in preparing complaints and will promptly refer such complaints to the Director. The LVERs will keep a record of all complaints received and forwarded. LVERs will be informed of the progress and results of the veterans' complaint investigations. The State employment services shall cooperate with the Director in the investigation of any complaint. Such complaint is to be filed not later than 180 days from the date of the alleged violation unless the time for filing is extended by the Director for good cause shown.

(b) *Referral to contractor.*—When a complaint is filed by an employee of a contractor and the contractor has an applicable internal review procedure, the complaint shall be referred to the contractor for processing under that procedure. The complaint and all actions taken thereunder shall be kept confidential by the contractor. If there has not been a resolution of the complaint under that procedure satisfactory to the complainant within 60 days of the referral, the LVER will refer the complaint to the Department of Labor or designated agency which will proceed as provided in this section.

(c) *Contents of complaints.*—Complaints must be signed by the complainants or their authorized representatives and must contain the following information: (1) Name and address (including telephone number) of the complainant, (2) name and address of the contractor or subcontractor who committed the alleged violation, (3) a description of the act or acts considered to be a violation, (4) a copy of the veteran's form DD–214, and, where applicable, VAL–5 or similar VA certification indicating the percent of disability, updated within one year prior to the date the complaint is filed, and (5) other pertinent information available which will assist in the investigation and resolution of the complaint, including the name of any known federal agency with which the employer has contracted.

(d) *Incomplete information.*—Where a complaint contains incomplete information, the Director or the agency designated by the Director for investigation of the complaint shall seek the needed information from the complainant. If the information is not furnished to the agency or the Director within 60 days of the date of such request, the case may be closed.

(e) *Investigations.*—The Department of Labor or the designated agency shall institute a prompt investigation of each complaint, and shall be responsible for developing a complete case record. A complete case record consists of the following: (1) Name and address of each person interviewed, (2) a summary of his or her statement, (3) copies or summaries of pertinent documents, (4) a narrative summary of the evidence disclosed in the investigation as it related to each charge, and (5) recommended findings and resolution.

(f) *Responsibilities of agencies.*—Agencies shall conduct investigations of complaints in accordance with specific requests of the Director.

(g) *Resolution of matters.*—(1) If the complaint investigation shows no violation of the Act or regulations in this Part, or if the agency or the Director decides not to initiate administrative or legal proceedings against the contractor, the complainant shall be so notified. Within 30 days, the complainant may request review by the Director of such a finding or decision.

(2) Where an investigation indicates that the contractor has not complied with the requirements of the Act or this Part, efforts shall be made to secure compliance through conciliation and persuasion within a reasonable time. Before the contractor or subcontractor can be found to be in compliance, it must make a specific commitment, in writing, to take corrective action to meet the requirements of the Act and this Part. The commitment must indicate the precise action to be taken and dates for completion. The time period allowed should be no longer than the minimum period necessary to effect such changes. Upon approval of such commitment by the Director or the agency, the contractor may be considered in compliance on condition that the commitments are kept. Where the matter has been referred to an agency for investigation and resolution, the contractor and the complainant shall be advised that the resolution is subject to review by the Director and may be disapproved if it is determined that such

resolution is not sufficient to achieve compliance.

(3) Where the complaint investigation indicates a violation of the Act or regulations in this Part (and the complaint has not been resolved by informal means) the Director, or the agency with the approval of the Director, shall afford the contractor an opportunity for a hearing in accordance with § 60–250.29.

§ 60–250.27 Noncompliance with the affirmative action clause.

Noncompliance with the prime contractor's or subcontractor's obligations under the affirmative action clause is a ground for taking appropriate action for noncompliance as set forth in § 60–250.28 by the agency, the Director, prime contractor, or subcontractor. Any such noncompliance shall be reported in writing to the Director by the agency as soon as practicable after it is identified.

§ 60–250.28 Actions for noncompliance.

(a) *General.* In every case where any complaint investigation indicates the existence of a violation of the affirmative action clause or these regulations, the matter should be resolved by informal means, including conciliation, and persuasion, whenever possible. This will also include establishing a corrective action program in accordance with § 60–250.26(g)(2). Where the apparent violation is not resolved by informal means, the Director or the agency shall proceed in accordance with the enforcement procedures contained in this Part.

(b) *Judicial enforcement.*—In addition to the administrative remedies set forth herein, the Director may, within the limitations of applicable law, seek appropriate judicial action to enforce the contractual provisions set forth in § 60–250.4 incuding appropriate injunctive relief.

(c) *Withholding progress payments.*—With the prior approval of the Director so much of the accrued payment due on the contract or any other contract between the government prime contractor and the federal government may be withheld as necessary to correct any violations of the provisions of the affirmative action clause.

(d) *Termination.*—A contract or subcontract may be cancelled or terminated, in whole or in part, for failure to comply with the provisions of the affirmative action clause.

(e) *Debarment.*—A prime contractor or subcontractor or a prospective contractor or subcontractor may be debarred from receiving future contracts for failure to comply with the provisions of the affirmative action clause.

§ 60–250.29 Formal hearings.

(a) *Hearing opportunity.*—An opportunity for a formal hearing shall be afforded to a prime contractor or a subcontractor or a prospective prime contractor or subcontractor by the agency or Director in any of the following circumstances:

(1) An apparent violation of the affirmative action clause by a contractor or subcontractor, as shown by any investigation, is not resolved by informal means and a hearing is requested; or

(2) The Director, or an agency upon prior notification to the Director, proposes to cancel or terminate the contract or withhold progress payments, or cause the contract to be canceled or terminated or progress payments to be withheld, in whole or in part, on a contract or contracts, or to require cancellation or termination of a contract or subcontract or withholding of progress payments; or

(3) The Director, or an agency with the approval of the Director, proposes to declare a prime contractor or subcontractor ineligible for further contracts or subcontracts under the Act.

(b) *Hearing practice and procedure.*—(1) Hearings conducted by the Office of Federal Contract Compliance Programs under this Part shall be governed by the rules of practice and procedure contained in 41 CFR Part 60–30 except that the Director shall perform all the duties and functions assigned to the Secretary by that Part.

(2) The practice and procedure for hearings conducted by agencies shall be consistent with the requirements of this section.

(i) Written notices of proposed action for noncompliance, signed by the appropriate agency official, shall be sent to the last known address of the prime contractor or subcontractor by certified mail, return receipt requested. If the contractor does not receive such notice, a copy of such notice shall be published in the Federal Register. The notice shall contain a precise jurisdictional statement, a short and plain statement of the matters furnishing a basis for the action for noncompliance, an enumeration of the actions being requested, and a citation of the provisions pursuant to which the requested action may be taken. The prime contractor or subcontractor shall be afforded at least 14 days from receipt of the notice of proposed action for noncompliance in which to file an answer to the notice and a request for a hearing with the agency and the contractor shall be so informed in the notice. The answer shall admit or deny specifically, and in detail, matters set forth in each allegation of the notice unless the prime contractor or subcontractor is without knowledge, in which case the answer shall so state, and the statement shall be deemed a denial. Matters not specifically denied shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered. The hearing request shall be included as a separate paragraph of the answer.

(ii) Reasonable notice of the hearing shall be sent by certified mail, return receipt requested, to the last known address of the prime contractor or subcontractor complained against. Such notice shall contain the time, place, and nature of the hearing and a statement of the legal authority pursuant to which the hearing is to be held. Hearings shall be before a hearing officer designated by or at the direction of the agency head. Each party shall have the right to counsel or other representative, a fair opportunity to present evidence and argument, and to cross-examine. Whenever a formal hearing is based in whole or in part on matters subject to the collective bargaining agreement and compliance may necessitate a revision of such agreement, any labor organization which is a signatory to the agreement shall have the right to participate as a party. Whenever a hearing is held on a complaint under § 60–250.26 any person or organization shall be permitted to participate upon a showing that such person or organization has an interest in the proceedings and may contribute materially to the proper disposition thereof. The hearing officer shall make his or her proposed findings and conclusions upon the basis of the record.

(iii) If, at the end of the 14-day period referred to in this section, no answer including a hearing request has been filed or the answer does not raise issues of fact or law, the agency head may cancel or terminate or cause to be canceled or terminated, or withhold progress payments with respect to any one or more contracts or subcontracts, or parts thereof, held by the prime contractor or subcontractor complained against, or enter an order declaring such contractor or subcontractor ineligible for further contracts, subcontracts, or extensions or other modifications of existing contracts, until the contractor or subcontractor has satisfied the Director that it has established and will carry out personnel and employment policies and practices in compliance with the provisions of the Act, affirmative action clause, and the regulations.

(iv) When the hearing is conducted by an agency, the hearing officer shall make recommendations to the head of the agency who shall make a decision whether action for noncompliance will be taken against the contractor or subcontractor. No decision by the head of the agency, or his or her representative, shall be final without the prior approval of the Director. Parties shall be furnished with copies of the hearing officer's recommendations, and shall be given an opportunity to submit their views.

§ 60–250.30 Notification of agencies.

The Director shall notify the heads of all agencies of any action for noncompliance taken against any contractor after such actions have been taken. No agency may issue a waiver under § 60–250.3(b)(1) to any contractor subject to such action without prior approval of the Director.

§ 60–250.31 Contractor ineligibility list.

The Director shall distribute periodically a list to all executive departments and agencies giving the names of prime contractors and subcontractors who have been declared ineligible under the regulations in this Part and the Act.

§ 60–250.32 Disputed matters related to the affirmative action program.

The procedures set forth in the regulations in this Part govern all disputes relative to a contractor's compliance with the affirmative action clause and the requirements of this Part. Any disputes relating to issues other than compliance, including contract costs arising out of the contractor's efforts to comply, shall be determined by the disputes clause of the contract.

§ 60–250.33 Responsibilities of State employment services.

(a) Any job openings listed pursuant to § 60–250.3 which requires contractors to list their job openings with State employment services offices, shall be utilized by State employment security agencies to refer qualified disabled veterans and veterans and veterans of the Vietnam era.

(b) The local offices of the Federal-State employment service shall give priority in referral to disabled veterans and veterans of the Vietnam era to such employment openings listed by contractors and subcontractors pursuant to this part.

(c) The local employment office staff will contract employers to solicit job orders. The State employment service will make available information pertinent to a determination of whether the contractor is in compliance with the mandatory listing and reporting requirements of the affirmative action clause.

Subpart C—Ancillary Matters

§ 60–250.50 Reinstatement of ineligible contractors and subcontractors.

Any prime contractor or subcontractor debarred from further contracts or subcontracts under the Act may request reinstatement in a letter directed to the Director. In connection with the reinstatement proceedings, the prime contractor or subcontractor shall be required to show that it has established and will carry out employment policies and practices in compliance with the affirmative action clause.

§ 60–250.51 Intimidation and interference.

The sanctions and penalties contained in this regulation may be exercised by the agency or the Director against any prime contractor or subcontractor, who fails to take all necessary steps to ensure that no person intimidates, threatens, coerces, or discriminates against any individual for the purpose of interfering with the filing of a complaint, furnishing information, or assisting or participating in any manner in an investigation, compliance review, hearing, or any other activity related to the administration of the Act.

§ 60–250.52 Recordkeeping.

(a) Each contractor and subcontractor shall maintain for a period not less than one year records regarding complaints and actions taken thereunder, and such employment or other records as required by the Director or agency or by this Part and shall furnish such information in the form required by the Director or agency or as the Director deems necessary for the administration of the Act and regulations issued under this Part.

(b) Failure to maintain complete and accurate records as required under this section or failure to update annually the affirmative action program as required by § 60–250.5(b) constitutes noncompliance with the contractor's or subcontractor's obligations under the affirmative action clause and is a ground for the imposition of appropriate sanctions.

§ 60–250.53 Access to records of employment.

Each prime contractor and subcontractor shall permit access during normal business hours to its places of business, books, records and accounts pertinent to compliance with the Act, and all rules and regulations promulgated pursuant thereto for the purposes of complaint investigations, and investigations of performance under the affirmative action clause of the contract or subcontract. Information obtained in this manner shall be used only in connection with the administration of the Act.

§ 60–250.54 Rulings and interpretations.

Rulings under or interpretations of the Act and the regulations contained in this Part 60–250 shall be made by the Secretary or his or her designee.

Appendix A

This employer is a government contractor subject to Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 which requires government contractors to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era. If you are a disabled veteran covered by this program and would like to be considered under the affirmative action program, please tell us. This information is voluntary and refusal to provide it will not subject you to discharge or disciplinary treatment. Information obtained concerning individuals shall be kept confidential, except that (i) supervisors and managers may be informed regarding restrictions on the work or duties of disabled veterans, and regarding necessary accommodations, and (ii) first aid personnel may be informed, when and to the extent appropriate, if the condition might require emergency treatment. In order to assure proper placement of all employees, we do request that you answer the following question: If you have a disability which might affect your performance or create a hazard to yourself or others in connection with the job for which you are applying, please state the following: (1) The skills and procedures you use or intend to use to perform the job notwithstanding the disability and (2) the accommodations we could make which would enable you to perform the job properly and safely, including special equipment, changes in the physical layout of the job, elimination of certain duties relating to the job or other accommodations.

Appendix B

The following is a set of procedures which contractors may use to meet the requirements of § 60–250.6(b).

(1) The application or personnel form of each known covered veteran should be annotated to identify each vacancy for which he or she was considered, and the form should be quickly retrievable for review by the agency, the Department of Labor and the contractor's personnel officials for use in investigations and internal compliance activities.

(2) The personnel or application records of each known covered veteran should include (i) the identification of each promotion for which he or she was considered, and (ii) the identification of each training program for which he or she was considered.

(3) In each case where a covered veteran is rejected for employment, promotion or training, a statement of the reasons should be appended to the personnel file or application form. This statement should include comparison of the qualifications of the covered veteran and the person(s) selected, as well as a description of the accommodations considered. This statement should be available to the applicant or employee concerned upon request.

(4) Where applicants or employees are selected for hire, promotion or training and the contractor undertakes any accommodation which makes it possible for him or her to place a covered veteran on the job, the application form or personnel record should contain a description of that accommodation.

Effective date: The regulations in this Part shall become effective on July 26, 1976.

Signed at Washington, D.C. this 18th day of June, 1976.

W. J. USERY, Jr.,
Secretary of Labor.

JOHN C. READ,
Assistant Secretary for Employment Standards.

LAWRENCE LORBER,
Director, Office of Federal Contract Compliance Programs.

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