

#### §4.127

#### 10 CFR Ch. I (1-1-03 Edition)

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 that receives or benefits from Federal financial assistance.

#### §4.127 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing facilities or every part of 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, reassignment of classes or other services to accessible buildings, assignment of aids to beneficiaries, home visits, delivery of health, welfare or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of §4.128 or any other methods that result in making its program or activity accessible to and usable by handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

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

(d) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop a transition plan set-

ting forth the steps necessary to complete the changes. The plan is to be developed with the assistance of interested persons, including handicapped persons, or organizations representing handicapped persons, and the plan is to meet with the approval of the NRC. The recipient shall retain a copy of the transition plan as a record until any structural change to a facility is complete. A copy of the transition plan is to be made available for public inspection. At a minimum, the plan is to:

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

(2) Describe in detail the methods that will be used to make the facilities accessible to and usable by handicapped persons;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period or the transition plan is longer than 1 year, identify steps that will be taken during each year of the transition period; and

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

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

[45 FR 14535, Mar. 6, 1980, as amended at 53 FR 19244, May 27, 1988]

#### §4.128 New construction.

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

(b) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (USAF) (appendix A to 41 CFR subpart

101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[55 FR 52138, 52139, Dec. 19, 1990]

#### ENFORCEMENT

#### §4.231 Responsibility of applicants and recipients.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this subpart applies shall submit an assurance, on a form specified by the responsible NRC official, that the program will be operated in compliance with the subpart. An applicant may incorporate these assurances by reference in subsequent applications to the NRC.

(b) *Duration of obligation.* The assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Remedial action.* (1) If the responsible NRC official finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this subpart, the recipient shall take such remedial action as the responsible NRC official deems necessary to overcome the effect of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this subpart and where another recipient exercises control over the recipient that has discriminated,

the responsible NRC official, where appropriate, may require either or both recipients to take remedial action.

(3) The responsible NRC official may, where necessary to overcome the effects of discrimination in violation of section 504 or this subpart, 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 or (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(d) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this subpart, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(e) *Self-evaluation.* (1) A recipient shall as soon as practicable:

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

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

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

(2) A recipient shall, for at least three years following completion of the evaluation required under paragraph (e)(1) of this section, maintain on file, make available for public inspection, and provide to the responsible NRC official upon request: (i) A list of the interested persons consulted, (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.