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

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

(2) The Commission may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Commission may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The Commission may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Commission; or

(ii) Defeat or substantially impair the accomplishment of objectives of a program or activity with respect to handicapped persons.

(5) The Commission, in selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The Commission may not administer a certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the Commission establish requirements for the programs or activities of certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. The programs or activities of entities that are certified by the Commission are not, themselves, covered by this part.

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(c) The exclusion of non-handicapped persons from the benefits of a program limited by Federal statute or Executive Order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive Order to a different class of handicapped persons is not prohibited by this part.

(d) The Commission will administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§ 9420.4 Program accessibility: Discrimination prohibited.

Except as otherwise provided in 11 CFR 9420.6 and 11 CFR 9420.7, no qualified handicapped person shall be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Commission because its facilities are inaccessible to or unusable by handicapped persons.

§ 9420.5 Program accessibility: Existing facilities.

(a) *General.* The Commission will 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—

(1) Necessarily require the Commission to make each of its existing facilities accessible to and usable by handicapped persons;

(2) Require the Commission to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. The Commission has the burden of proving that compliance with 11 CFR 9420.6(a) would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the Commission after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching

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that conclusion. If an action would result in such an alteration or such burdens, the Commission will take any other action that would not result in such an alteration or such a burden but would nevertheless ensure that handicapped person receive the benefits and services of the program or activity.

(b) *Methods.* The Commission may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The Commission is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The Commission, in making alterations to existing buildings will meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended, 42 U.S.C. 4151-4157, and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the Commission will give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The Commission shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes will be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Commission will develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan will be developed with the assistance of interested persons, including handicapped persons

and organizations representing handicapped persons. A copy of the transition plan will be made available for public inspection. The plan will, at a minimum—

(1) Identify physical obstacles in the Commission's facilities that limit the accessibility of its programs or activities to handicapped persons;

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

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

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the person or groups with whose assistance the plan was prepared.

§ 9420.6 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Commission shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act, 42 U.S.C. 4151-4157 apply to buildings covered by this section.

§ 9420.7 Communications.

(a) The Commission will take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The commission will furnish appropriate auxiliary aids when necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Commission.

(i) In determining what type of auxiliary aid is necessary, the Commission will give primary consideration to the requests of the handicapped person.

(ii) Where the Commission communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDDs)