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that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[45 FR 40515, June 13, 1980, as amended at 55 FR 52138 and 52140, Dec. 19, 1990]

§ 1040.74 Accessibility in historic properties.

(a) *Methods to accomplish accessibility.* Recipients shall operate each program or activity involving historic properties so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. The recipient shall exhaust subsection (b)(1) (methods to accomplish accessibility without building alterations or structural changes) before proceeding to subsection (b)(2) (methods to accomplish program accessibility resulting in building alterations). The recipient shall exhaust subsection (b)(2) (methods to accomplish accessibility resulting in building alterations) before proceeding to subsection (b)(3) (methods to accomplish accessibility resulting in structural changes).

(1) *Methods to accomplish accessibility without building alterations or structural changes.* The recipient shall investigate compliance methods which do not alter the historic character or architectural integrity of the property and shall utilize such methods unless such methods are ineffective in achieving accessibility. Such methods may include, but are not limited to:

(i) Reassigning aid, benefits, or services to accessible locations within the facility.

(ii) Assigning persons to aid handicapped persons into or through an otherwise inaccessible facility.

(iii) Delivering aid, benefits, or services at alternative accessible sites operated by or available for such use by the recipient.

(iv) Adopting other innovative methods which make aid, benefits, or services accessible to the handicapped.

(2) *Methods to accomplish accessibility resulting in building alterations.* The recipient shall determine that accessibility cannot feasibly be accomplished by Methods to Accomplish Accessibility without Building Alterations or Structural Changes, subsection (b)(1) prior to utilizing building alteration as a method of accomplishing program ac-

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cessibility. Alterations must comply with the accessibility standards adopted in these regulations. Building alterations shall be undertaken so as not to alter or destroy historically, architecturally, or culturally significant elements or features.

(3) *Methods to accomplish accessibility resulting in structural changes.* The recipient shall determine that accessibility cannot feasibly be accomplished by Methods to Accomplish Accessibility without Building Alterations or Structural Changes, subsection (b)(2) before considering structural changes as a method of accomplishing program accessibility. Structural changes must comply with the accessibility standards adopted in these regulations. Structural changes shall be undertaken so as not to alter or destroy historically, architecturally or culturally significant elements or features.

(b) *Modification or waiver of accessibility standards.* The applicability of the accessibility standards set forth in these regulations may be modified or waived on a case-by-case basis, upon application to the Director, FAPD, where the recipient can demonstrate that, because of the nature of the activity, the provision of access would be infeasible or would substantially impair the historic, architectural or cultural integrity of the historic property.

(National Historic Preservation Act of 1966, Pub. L. 89-665, 80 Stat 915, 16 U.S.C. 470; 11593, 3 CFR 1971 Comp., p. 154; 36 CFR part 800)

[45 FR 40515, June 13, 1980, as amended at 68 FR 51347, Aug. 26, 2003]

Subpart E—Nondiscrimination on the Basis of Age—Age Discrimination Act of 1975, as Amended

AUTHORITY: Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*); 45 CFR part 90.

SOURCE: 50 FR 8089, Feb. 27, 1985, unless otherwise noted.

GENERAL PROVISIONS

§ 1040.81 Purpose.

The purpose of these regulations is to implement the Age Discrimination Act of 1975, as Amended, which prohibits

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discrimination on the basis of age in programs or activities receiving Federal financial assistance. In accordance with the Age Discrimination Act, federally assisted programs or activities and recipients of Federal funds may continue to use age distinctions and factors other than age which meet the requirements of the Act and these regulations.

[50 FR 8089, Feb. 27, 1985, as amended at 68 FR 51348, Aug. 26, 2003]

§ 1040.82 Application.

(a) These regulations apply to each program or activity which receives Federal financial assistance provided by DOE.

(b) These regulations do not apply to—

(1) An age distinction contained in that part of a Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body which:

(i) Provides any benefits or assistance to persons based on age; or

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program.

[50 FR 8089, Feb. 27, 1985, as amended at 68 FR 51348, Aug. 26, 2003]

§ 1040.83 Definitions.

(a) *Act* means the Age Discrimination Act of 1975 as amended title III of Pub. L. 94-135, 42 U.S.C. 6101 et seq.

(b) *Action* means any act, activity, policy, rule, standard or method of administration; or the use of any policy, rule, standard, or method of administration.

(c) *Age* means how old a person is or the number of years from the date of a person's birth.

(d) *Age distinction* means any action using age or an age-related term (for example, "18 or over").

(e) *Age-related term* means a word or words which necessarily imply a particular age or range of ages (for exam-

ple, "children", "adult", "older persons", but not "student").

(f) *Days* mean calendar days.

(g) *Discrimination* means unlawful treatment based on age.

(h) *FERC* means the Federal Energy Regulatory Commission.

(i) *Field Civil Rights Officer* means the official in each DOE field office with responsibility for administering DOE's Civil Rights Program related to non-discrimination in Federally assisted programs or activities.

(j) *Recipient* means any State or its political subdivision, instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but excludes an individual who is the ultimate beneficiary of the assistance.

(k) *Secretary* means the Secretary, Department of Energy.

[50 FR 8089, Feb. 27, 1985, as amended at 68 FR 51348, Aug. 26, 2003]

STANDARDS FOR DETERMINING AGE DISCRIMINATION

§ 1040.84 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in § 1040.86 and of these regulations.

(a) *General rule.* No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

(b) *Specific rules.* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individuals in their opportunity to participate in any