responsibility to do business as a government contractor.

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

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

(i) That debarment is being considered.

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

(iii) The potential effect of the proposed debarment.

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

(6) If purchaser requests, the authorized officer shall hold a meeting with the purchaser within 20 calendar days. Any statements, records, or exhibits submitted by the purchaser at this meeting shall become part of the debarment decision record.

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

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

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

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

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

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

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

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

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

(ii) The cause of the action.

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

(iv) The effective date of the action.

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

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

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

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

May 7, 1985.

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

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Part IV

Department of Education

34 CFR Part 304

Removal of Architectural Barriers to the Handicapped; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 304

Removal of Architectural Barriers to the Handicapped

AGENCY: Department of Education.

ACTION: Final rule.

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

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

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

SUPPLEMENTARY INFORMATION:

A. Overview of the Program

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

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

(b) For the purpose of carrying out the provisions of this section, there are authorized to be appropriated such sums as may be necessary.

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

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

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

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

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

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

The authorizing statute for this program does not include a formula for distributing funds. The Secretary, however, amends the definitions of "direct grant program" and "State formula grant program" at 34 CFR 75.1(b) and 76.1(b), respectively, to include programs which contain a regulatory formula for distributing funds. In addition, conforming amendments are made to 34 CFR 76.260.

B. Overview of Regulatory Provisions

1. Subpart A—General

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

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

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

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

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

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

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

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

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

Section 304.21 describes how excess funds are reallocated.

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

Subpart D specifies the information which LEAs and IEUs must include in applications for subgrants. Readers should note that the EDGAR definition of "local educational agency" (34 CFR 77.1(c)) is substantively the same as the definition of that term under section 602(a)(8) of the EHA, and includes any public institution having administrative control and direction of a public elementary or secondary school. Consequently, State agencies and other public institutions which are legally responsible for the education of handicapped children are eligible for subgrants under this program.

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

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

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

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

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

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

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

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

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

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

Public Participation

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

Executive Order 12291

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

Paperwork Reduction Act of 1980

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

Intergovernmental Review

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

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

Assessment of Educational Impact

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

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

List of Subjects in 34 CFR Part 304

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

Citation of Legal Authority

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

line following each substantive provision of these final regulations.

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

Dated: July 11, 1985.

William J. Bennett,

Secretary of Education.

PART 75—[AMENDED]

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

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

§ 75.1 Programs to which Part 75 applies.

* * * * *

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

* * * * *

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

C. Education of the Handicapped Programs:

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

PART 76—[AMENDED]

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

§ 76.1 Programs to which Part 76 applies.

* * * * *

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

* * * * *

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

Education of the Handicapped Programs:

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

* * * * *

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

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

* * * * *

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

* * * * *

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

EDUCATION FOR THE HANDICAPPED PROGRAMS

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

7. Section 76.260 is revised to read as follows:

§ 76.260 Allotments are made under program statute or regulations.

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

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

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

PART 304—REMOVAL OF ARCHITECTURAL BARRIERS TO THE HANDICAPPED PROGRAM

Subpart A—General

Sec.

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

Subpart A—General

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

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

(20 U.S.C. 1406)

§ 304.2 Applicability of regulations in this part.

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

(20 U.S.C. 1406)

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

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

(a) The regulations in this Part 304.

(b) The Education Department General Administrative Regulations (EDGAR) set out in the following parts of Title 34 of the Code of Federal Regulations—

(1) Part 74 (Administration of Grants);

(2) Part 76 (State-administered Programs);

(3) Part 77 (Definitions that Apply to Department Regulations);

(4) Part 78 (Education Appeal Board); and

(5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

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

§ 304.4 Definitions

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

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

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

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

Handicapped children
Intermediate educational unit
Related services
Special education

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

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

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

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

(2) "Equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, telecommunications, sensory, and other technological aids and devices, and books, periodicals, documents, and other related materials.

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

§ 304.5 Acronyms that are used.

The following acronyms are used in this part:

"IEU" stands for intermediate educational unit.

"LEA" stands for local educational agency.

"SEA" stands for State educational agency.

(20 U.S.C. 1406)

§§ 304.6-304.9 [Reserved]

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

§ 304.10 Submission of an SEA application.

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

(20 U.S.C. 1406)

§ 304.11 Content of SEA application.

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

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

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

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

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

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

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

(1) A description of the goals and objectives to be supported by the grant in sufficient detail for the Secretary to determine what will be achieved with the grant.

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

(20 U.S.C. 1406)

§§ 304.12-304.19 [Reserved]

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

§ 304.20 Amount of an SEA's grant.

(a) For the purpose of this section—

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

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

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

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

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

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

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

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

(20 U.S.C. 1406)

§ 304.21 Reallocation of excess funds.

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

(20 U.S.C. 1406)

§§ 304.22-304.29 [Reserved]

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

§ 304.30 Submission of an application to the SEA.

In order to receive funds under this part for any fiscal year, an LEA or IEU shall submit an application for a subgrant to the appropriate SEA.

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

§ 304.31 LEA and IEU applications.

An LEA or IEU shall include in its application any information that is required by the SEA in order to fulfill its responsibilities under this part.

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

§§ 304.32-304.39 [Reserved]

Subpart E—How Does an SEA Make a Subgrant?

§ 304.40 Amount of a subgrant to an LEA or IEU.

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

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

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

(b) The SEA may establish minimum and maximum amounts for subgrants.

(20 U.S.C.1406)

§ 304.41 Reallocation of excess funds.

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

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

(20 U.S.C. 1406)

§§ 304.42-304.49 [Reserved]

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

§ 304.50 Standards for the removal of architectural barriers.

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

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

(20 U.S.C. 1406)

§ 304.51 Project priorities.

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

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

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

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

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

(20 U.S.C. 1406)

§ 304.52 Project requirements.

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

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

§§ 304.53-304.59 [Reserved]

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

§ 304.60 Amount available for SEA administration.

An SEA may use up to five percent of its grant for the cost of administering funds provided under this part.

(20 U.S.C. 1406)

§ 304.61 Administrative responsibilities and allowable costs.

Administrative costs under this part include—

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

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

(c) Technical assistance that an SEA provides to LEAs and IEUs with respect to the requirements of this part.

(20 U.S.C. 1406)

§ 304.62-304.69 [Reserved]

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

§ 304.60 Amount available for SEA administration.

An SEA may use up to five percent of its grant for the cost of administering funds provided under this part.

(20 U.S.C. 1406)

§ 304.61 Administrative responsibilities and allowable costs.

Administrative costs under this part include—

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

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

(c) Technical assistance that an SEA provides to LEAs and IEUs with respect to the requirements of this part.

(20 U.S.C. 1406)

§ 304.62-304.69 [Reserved]

Appendix—Summary of Comments and Responses (Note: This Appendix Will Not Be Codified in the Code of Federal Regulations)

The following is a summary of the comments received on the notice of proposed rulemaking for the Removal of Architectural Barriers to the Handicapped program published on September 19, 1984. Each comment is followed by a response that indicates a change has been made or why no

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

Subpart A

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Response. No change has been made. Communication aids, computer access devices, and augmentative communication devices are included under the terms "telecommunications, sensory, and other technological aids and devices" in the definition of equipment.

Subpart B

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

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

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

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

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

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

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

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

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

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

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

Subpart C

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

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

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

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

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

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

Under Section 611(e)(2) of the EHA-B, the Insular Areas may receive grants that do not exceed a total amount equal to one percent of the amounts available to all States under that part for any fiscal year. For the purpose of the Removal of Architectural Barriers to the Handicapped program, the Secretary has determined that a maximum of one-half of one percent of the appropriated funds will apply to the funds reserved for the Insular Areas in order to provide a fair share of the program funds to each eligible State and jurisdiction.

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

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

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

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

Subpart D

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

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

Subpart F

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

modifications will eliminate previously identified program accessibility barriers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subpart G

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

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

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

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

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

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

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Thursday
July 18, 1985

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened and Endangered Status; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Ribes Echinellum (Miccosukee Gooseberry)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Ribes Echinellum* (Coville) Rehder (Miccosukee gooseberry) to be a threatened species under the authority contained in the Endangered Species Act (Act) of 1973, as amended. *Ribes Echinellum* is found at only two locations, one in South Carolina and another, with two population segments, in Florida. *Ribes Echinellum* is threatened by potential recreational activities at both sites, and in Florida from development pressures and logging of its lakeshore habitat. This action will implement the protection provided by the Act for *Ribes Echinellum* (Miccosukee gooseberry).

DATE: The effective date of this rule is August 19, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, NC 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Currie at the above address (704/259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

Ribes echinellum was first discovered by two Florida Botanists in the early spring of 1924, along the shore of Lake Miccosukee, in Jefferson County, Florida (Coville, 1924). *Ribes echinellum* remained known only from this one population along the shores of Lake Miccosukee for over 30 years, until a second population was located about 308 kilometers (200 miles) northeast in McCormick County, South Carolina, in 1957 (Radford, 1959). The South Carolina location is considered to represent one of the most unusual floristic assemblages in the two Carolinas (Radford and Martin, 1975). In 1984, an additional segment of the Florida population was discovered approximately 0.6 kilometers (1 mile) from the previously known plants. These locations remain the only known sites for *Ribes echinellum*.

This unique plant is a shrub that reaches 1 meter (3.3 feet) in height and forms patches that often measure several meters in diameter. The plant has spiny stems and three-lobed leaves that measure 1–2 centimeters (0.5–1 inch) in length. The flowers are greenish white and small. The fruits are spiny and measure up to 22 millimeters (1 inch) in diameter.

Past Federal Government actions involving *Ribes echinellum* began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. The Secretary of the Smithsonian presented this report (House Document No. 94–51) to Congress on January 9, 1975. On July 1, 1975, the Service published a notice of review in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2), now section 4(b)(3)(a), of the Act, and of its intention thereby to review the status of the covered plants. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to Section 4 of the Act. *Ribes echinellum* was included in the Smithsonian petition and the 1976 proposal. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. *Ribes echinellum* was included as a category-1 species in a revised list of plants under review for threatened or endangered classification published in the December 15, 1980, **Federal Register** (45 FR 82480). Category 1 comprises taxa for which the Service presently has sufficient biological information to support their being proposed to be listed as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. The species listed in the December 15, 1980, notice of review were considered to be petitioned, and the deadline for a finding on those species, including *Ribes echinellum*, was October 13, 1983. On October 13, 1983, the Service found that the petitioned listing of *Ribes echinellum* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. This finding was published in the **Federal Register** on January 20, 1984 (49 FR 2485). On August 31, 1984, the Service published a proposal to list *Ribes echinellum* as a threatened species (49 FR 34535). That proposal constituted the next one-year finding as required by the 1982 Amendments to the Endangered Species Act. The proposal provided information on the species' biology, status, and threats, and the potential implications of listing. The proposal also solicited comments on the status, distribution, and threats to the species.

Summary of Comments and Recommendations

In the August 31, 1984, proposed rule (49 FR 34535) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *McCormick Messenger*, McCormick, South Carolina, on September 13, 1984, and in the *Monticello News*, Monticello, Florida, on September 12, 1984, which invited public comment. On September 18, 1984, the Fish and Wildlife Service received a request for a public hearing. A notice announcing the public hearing was published on October 22, 1984, in the **Federal Register** (49 FR 41266). Notice of the public hearing was also published in the *Monticello News* on October 24, 1984. Eleven substantive comments were received in response to the **Federal Register** and newspaper notifications. A public hearing was held on November 8, 1984, in the Jefferson County Courthouse, Monticello, Florida. The comments and public hearing are summarized below.

The proposal was supported by the Governor of South Carolina, South Carolina Wildlife and Marine Resources Department, South Carolina Nature Conservancy, Florida Department of Agriculture, Florida Department of Environmental Regulation, Florida Native Plant Society, Apalachee Regional Planning Council, and Florida Natural Areas Inventory. The last named group also reported that a

previously unknown group of plants had been discovered in Florida in January 1984. The Orvis Company stated that it would cooperate with efforts to protect *Ribes echinellum* on its lands.

Woodlanders (a native plant dealer) provided information on its experience in propagating *Ribes echinellum*. It stated that the plant seemed to qualify for protection as a threatened species under the Endangered Species Act; however, it expressed doubts about the severity of threats to both the Florida and South Carolina populations of *Ribes echinellum*. The Service agrees that the threats facing the South Carolina population are not severe; however, the Florida population is not currently protected. The low number of populations and low total number of plants would have warranted endangered status if the threats had been more immediate.

Woodlanders further expressed concern that listing of the plant as a threatened species might restrict or prohibit its sale of cultivated *Ribes echinellum*. The merits of maintaining a commercial source of artificially propagated endangered and threatened plant species such as *Ribes echinellum* were also stated in the letter. The trade prohibitions, which are found in the Act and at 50 CFR 17.71 and 17.72, will prohibit interstate commerce in *Ribes echinellum*, except for the sale of seeds obtained from cultivated plants and shipped in containers clearly marked "cultivated origin." However, the Act and 50 CFR 17.72 also provide for issuance of permits to engage in interstate commerce of federally listed threatened plant species. The Service generally supports the commercial availability of federally listed endangered or threatened plant species, provided the original plant material is obtained in a manner that does not adversely affect wild populations of the species and the material in interstate commerce is of propagated origin.

An attorney representing an interested party in Florida requested a public hearing and asked for information about the specific location of the Florida population. Following a brief summary of the proposal, which included a review of current knowledge of the status of *Ribes echinellum*, the public hearing was opened to public comment. The above mentioned attorney stated that the best protection for *Ribes echinellum* would be provided if the Federal Government owned the land on which it occurred. He further indicated that the lands on which the Florida population occurs may in fact be owned by the State or Federal Government. This attorney also requested an explanation of why the species was being proposed as a threatened species in 1984 when it was discovered in 1924 and had been under review by the Service for some time. A representative of the Apalachee Regional Planning Council read from the Council's letter indicating their support for threatened status. An attorney representing a landowner for part of the Florida population of *Ribes echinellum* requested information about restrictions that would be placed on his client if *Ribes echinellum* were listed as a threatened species. More detailed information about listing restrictions and the geographical location of the Florida population of *Ribes echinellum* has been provided to the interested party and his attorney.

Notwithstanding comments to the contrary, the information currently available to the Service indicates that all segments of the Florida population of *Ribes echinellum* are located on privately owned land. Further examination of land ownership of this population may be an appropriate part of future recovery efforts for this species. Information about the discovery of the Miccosukee gooseberry is included in the "Background" section of this rule. The reasons for the extended period of time that has elapsed since *Ribes echinellum* was first recognized as a potential candidate for protection under the Act and the August 31, 1984, proposal to list it as a threatened species are also reviewed in the "Background" section of this rule. The potential restrictions on the actions of private landowners are reviewed in the "Available Conservation Measures" section of this rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Ribes echinellum* (Miccosukee gooseberry) should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Ribes echinellum* (Coville) Rehder (Miccosukee gooseberry) (Syn: *Grossularia echinella* Coville), are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Because of its localization to only two populations, *Ribes echinellum* is particularly vulnerable to any natural or human-influenced disturbance. The South Carolina population occurs on lands managed as a nature preserve by the South Carolina Wildlife and Marine Resources Department. Increased visitation by the public to this area could increase the risk of accidental destruction and trampling. Additional protection and management planning is needed at the South Carolina site. Also, research is needed to determine the management needs for *Ribes echinellum*.

The species' continued existence is more tenuous in Florida. The Florida population is on privately owned lands and the sites have potential for lakeside development. The present owners have no plans to sell or develop the sites, but subsequent owners may well choose to develop the sites for homesites or recreational developments if protection planning does not occur. Logging of the associated hardwoods and severe fire could pose additional threats to the Florida population (Milstead, 1978). Logging has occurred near part of the Florida site, with observed detrimental effects (Kral, 1977).

Both populations of *Ribes echinellum* occur at sites (riverbank and lakeshore) that have potential for recreational use. If this recreational use is not controlled with the protection of *Ribes echinellum* as a primary consideration, negative impacts to the populations could result.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Gooseberries and currants are cultivated for their edible fruits and for their ornamental habit and bloom. The Miccosukee gooseberry is not in demand for these purposes at present, but, with publicity, such a demand could occur.

C. *Disease or predation.* None known.

D. *The inadequacy of existing regulatory mechanisms. Ribes echinellum* is afforded limited protection under Florida State law, Chapter 65–426, which includes prohibitions concerning taking, transport, and the sale of plants listed under the Florida law. South Carolina does not have a State law to protect endangered plants, but *Ribes echinellum* is indirectly protected under the Natural Area prohibitions against unauthorized plant taking. The Endangered Species Act will offer additional protection for the species.

E. *Other natural or manmade factors affecting its continued existence.* The small size and number of the populations cause this species to be in

jeopardy due to natural perturbations such as lightning fires or to natural fluctuations in the numbers of extant individuals. The South Carolina population is threatened by competition from the introduced vine, Japanese honeysuckle (*Lonicera japonica*).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Ribes echinellum* as threatened. With only two populations of this species known to exist, it warrants protection under the Act; threatened status seems appropriate since one of the sites is in State ownership and managed as a natural area. For the reasons given below, critical habitat is not being designated.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Ribes echinellum* at this time. Taking is not prohibited by the Endangered Species Act with respect to plants, except for a prohibition against removal and reduction to possession of endangered plants from lands under Federal jurisdiction. Gooseberries and currants are cultivated for their edible fruits and for their ornamental habit and bloom. Publication of critical habitat descriptions would make this species even more vulnerable to taking and increase enforcement problems. Although South Carolina State law prohibits unauthorized plant taking from natural areas, drawing attention to the site could increase enforcement problems. Increased visitation at both populations, stimulated by critical habitat designation, could also result in trampling problems. Both the appropriate South Carolina land-management agency and the Florida landowners have been informed of the locations of this species and the importance of protecting *Ribes echinellum*, so no additional benefits from the notification function of a critical habitat designation are expected. Therefore, it would not be prudent to determine critical habitat for *Ribes echinellum* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal involvement is expected or known for *Ribes echinellum*.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Ribes echinellum*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Seeds from cultivated specimens of threatened species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since *Ribes echinellum* is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Section 4(d) allows for the provision of such protection to threatened species through regulations. This protection will apply to *Rives echinellum* once revised regulations are promulgated. Permits for exceptions to this prohibition are available through section 10(a) and 4(d) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that final regulations will be issued following public comment. As this species is not known to occur on Federal lands, no collecting permit requests are anticipated. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Coville, F.V. 1924. *Grossularia echinella*, a spiny-fruited gooseberry from Florida. Journal of Agricultural Research 28:71–76.

Kral, R. 1977. Personal communication by letter to Dr. R.R. Altevogt (then Staff Botanist at the Office of Endangered Species, Washington, D.C.) regarding the Florida population he visited in 1977.

Milstead, W.L. 1978. Status report on *Ribes echinellum*, U.S. Fish and Wildlife Service, Atlanta, Georgia. 19 pp.

Radford, A.E. 1959. A relict plant community in South Carolina. Journal of the Elisha Mitchell Scientific Society 75:35–43.

Radford, A.E., and D.L. Martin. 1975. Potential Ecological Natural Landmarks, Piedmont Region, Eastern United States. UNC-Chapel Hill, North Carolina. 4 pp.

Authors

The primary authors of this rule are Ms. LaVerne Smith and Mr. Quinn P. Sinnott, Office of Endangered Species, U.S. Fish and Wildlife Service,

Washington, D.C. 20240 (703/235–1975), and Mr. Robert R. Currie, Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321). Status information and a preliminary listing package were provided by Dr. Wayne Milstead, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Saxifragaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Saxifragaceae—Saxifrage family:						
Ribes echinellum	Miccosukee gooseberry	U.S.A. (FL, SC)	T	168	NA	NA
*	*	*	*	*	*	*

(Final: *Ribes echinellum* (Miccosukee gooseberry)—Threatened)

Dated: July 3, 1985.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–17075 Filed 7–17–85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Pityopsis Ruthii (Ruth's Golden Aster)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Pityopsis ruthii* (Small) Small (Ruth's golden aster), a plant endemic to Polk County, Tennessee, to be an endangered species under the Endangered Species Act of 1973 (Act), as amended. *Pityopsis ruthii* is endangered by water quality degradation, toxic chemical spills, and water level and flow regime alterations, and potentially from trampling associated with recreational use of its habitat. This action will implement the protection provided by the Act for *Pityopsis ruthii*.

DATE: The effective date of this rule is August 19, 1985.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Currie, at the above address (704/259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

Pityopsis ruthii, a member of the Asteraceae (Aster family), was first collected by Albert Ruth, A Knoxville botanist, near the Hiwassee River in Polk County, Tennessee. Ruth often visited this area between 1894 and 1902 and collected this unusual plant on several occasions (Bowers, 1972a). J.K. Small (1897) named the species in honor of Ruth, including it in the genus *Chrysopsis* in his original description. In 1933, Small transferred the pecies to the genus *Pityopsis*. Several alternative taxonomic treatments have been proposed for this and associated species (Harms, 1969; Bowers, 1972b; Cronquist, 1980; Semple *et al.*, 1980). Regardless of which genus (*Pityopsis*, *Heterotheca*, or *Chrysopsis*) the species is included in, all authors have recognized the specific distinctness of this unique plant. The inclusion of this species in the genus *Pityopsis*, as advocated by Semple *et al.* (1980), is widely supported and is followed here.

Following Ruth's original collections, *Pityopsis ruthii* was not collected again for almost 50 years. Harms (1969) speculated that the species might be extinct. Bowers (1972a) reported that *Pityopsis ruthii* had been rediscovered on the Hiwassee River by himself and two other Knoxville botanists and stated that W.J. Dress had also collected the species in 1953. The Dress collection had not been reported in the literature, and his collections were housed in herbaria outside the region. This resulted in a 19-year lapse in knowledge of Dress' discovery. In 1976, A. White discovered a small population of *Pityopsis ruthii* on the Ocoee River, Polk County, Tennessee (White, 1978). Despite searches of apparently suitable habitat on the adjacent Tellico and Conasauga River systems by White (1977) and Wofford and Smith (1980), *Pityopsis ruthii* is only known to occur on short reaches of the Ocoee and Hiwassee Rivers.

Pityopsis ruthii is a fibrous-rooted perennial which grows only in the soil-filled cracks of phyllite boulders in and adjacent to the Ocoee and Hiwassee Rivers. The stems are from one to three decimeters tall and bear long narrow leaves covered with silvery hairs. The yellow flower heads appear in a paniculate inflorescence in late August and September. The fruits (achenes) develop a few weeks after the flowers fade (Wofford and Smith, 1980).

Federal actions involving *Pityopsis ruthii* began with Section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of former section 4(c)(2) (now section 4(b)(3)(A), as amended) of the Act and of its intention thereby to review the status of those plants. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to Section 4 of the Act. *Pityopsis ruthii* was included in the Smithsonian petition and the 1976 proposal. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978,