

Sunshine Act Meetings

Federal Register

Vol. 58, No. 205

Tuesday, October 26, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 25, November 1, 8, and 15, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 25

Monday, October 25

2:00 p.m.

Discussion of Nuclear Safety in the Former Soviet Union and Eastern Europe (Closed—Ex. 1)

Tuesday, October 26

10:00 a.m.

Briefing on Severe Accident Research Program (Public Meeting)
(Contact: Brian Sheron, 301-492-3500)

2:00 p.m.

Briefing on Proposed Standards for Gaseous Diffusion Facilities (Public Meeting)
(Contact: Charles Nilsen, 301-492-3834)

Wednesday, October 27

10:00 a.m.

Briefing on NRC Research Program on High Level Waste (Public Meeting)
(Contact: Nick Costanzi, 301-492-3760)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, October 29

10:00 a.m.

Briefing on Status of Thermo-Lag (Public Meeting)
(Contact: Ashok Thadani, 301-504-2884)

Week of November 1—Tentative

Wednesday, November 3

11:00 a.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Final Rule, 10 CFR Parts 30, 40, 50, 70, and 72, "Self-Guarantee as an Additional Financial Assurance Mechanism" (Tentative)

(Contact: Clark Prichard, 301-492-3734)

Week of November 8—Tentative

Monday, November 8

9:30 a.m.

Briefing on Site Decommissioning Management Plan (Public Meeting)
(Contact: David Fauver, 301-504-2554)

11:00 a.m.

Briefing on Investigative Matters (Closed—Ex. 5 & 7)

Wednesday, November 10

2:00 p.m.

Briefing on NRC Research Programs on Human Factors (Public Meeting)
(Contact: Tom King, 301-492-3510)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of November 15—Tentative

There are no Commission meetings scheduled for the Week of November 15.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The Schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504-1661.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93-26481 Filed 10-22-93; 2:27 pm]

BILLING CODE 7590-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR section 7.5) and the Government in the Sunshine Act (5 U.S.C. section 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, November 2, 1993, in Washington, DC. The meeting is open to the public and will be held at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

There will also be a session of the Board on Monday, November 1, 1993, but it will consist entirely of briefings and is not open to the public.

Agenda

Tuesday Session

November 2—8:30 a.m. (Open)

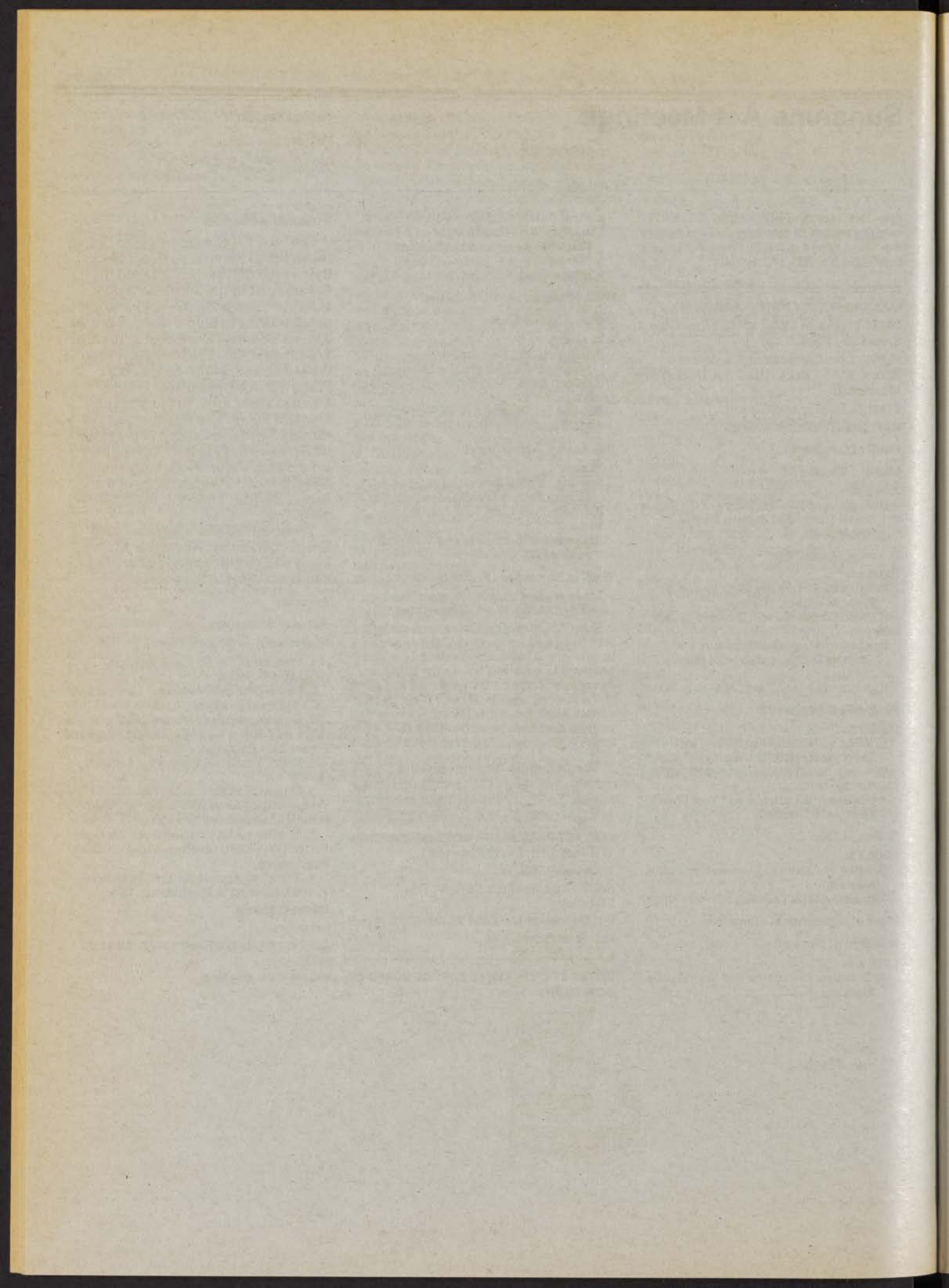
1. Minutes of the Previous Meeting, October 4-5, 1993.
2. Remarks of the Postmaster General and CEO. (Marvin Runyon)
3. Consideration of Nonprofit Rates. (Michael J. Riley, Chief Financial Officer and Senior Vice President, Finance)
4. Fiscal Year 1994 Borrowing Request. (Mr. Riley)
5. Quarterly Report on Service Performance. (Ann McK. Robinson, Vice President, Consumer Advocate)
6. Briefing on Carrier Sequence Bar Code Sorter. (William J. Dowling, Vice President, Engineering)
7. Tentative Agenda for the December 6-7, 1993, meeting in Washington, DC.

David F. Harris,

Secretary.

[FR Doc. 93-26426 Filed 10-22-93; 11:22 am]

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Federal Register

**Tuesday
October 26, 1993**

Part II

Office of Management and Budget

**Final Revision to OMB Circular A-45;
Notice**

OFFICE OF MANAGEMENT AND BUDGET

Final Revision to OMB Circular A-45, "Rental and Construction of Government Quarters"

AGENCY: Office of Management and Budget.

ACTION: The Office of Management and Budget (OMB) is publishing a final revision of its Circular No. A-45, dealing with the manner in which rents are set for Government rental quarters and related facilities, and the construction of Federally-owned housing.

SUMMARY: This revision of OMB Circular A-45 was undertaken pursuant to the requirement in the 1984 version of the circular that its policies and procedures be periodically reviewed. The circular was first published in 1951, and revised in 1952, 1964, and 1984. Portions of OMB Cir. No. A-18, Policies on Construction of Family Housing, October 18, 1957 (rescinded August 26, 1992), have been incorporated in A-45.

OMB published the proposed new circular in the *Federal Register* on November 22, 1991, and received 269 comments in response. New provisions relating to construction of Federally-owned housing were not published for comment as they were merely established policies that moved to and consolidated with A-45.

DATES: The effective date of the final version of Circular No. A-45 is 30 days from the date it is signed.

FOR FURTHER INFORMATION CONTACT: Richard A. Ong, Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street, NW., Washington, DC 20503. Telephone (202) 395-7209. Copies of the circular can be obtained by calling the OMB Publications Office at (202) 395-7332.

SUPPLEMENTARY INFORMATION: OMB convened a meeting of a number of housing officials from agencies affected by the policies of Circular A-45 in August of 1988 to discuss problems in interpreting or administering the rental quarters program and to discuss a number of unsolicited agency and Federal employee comments that were received. OMB solicited public comments in November of 1991 and convened another meeting of Federal housing officials to discuss the comments received. Meetings with the staff of the Alaska delegation were also held with respect to the definition of an "established community." The following discusses certain major issues raised by the comments and participants

in the meetings described, and lists the major changes made in the circular:

1. *In general.* The Federal agency quarters program affects 19,000 units in widely different environments. Unavoidably, Circular No. A-45 relies on general rules that do not reach every individual tenant's circumstances or address every possible eventuality. Nonetheless, the overall result of implementation of the circular is rents for Government quarters that are fair, low, and responsive to individual circumstances and to the absence of features that make one's residence desirable to most of our contemporaries in and out of the Government.

2. *Isolation Adjustment.* Comments overwhelmingly rejected the proposed change in the method of calculating the isolation adjustment. Accordingly, the formula remains as it was in the 1984 circular. We did not adopt any other suggestions for changing the value of the isolation adjustment. The formula provides for an adequate adjustment based on number of trips and mode of travel and takes into account periodic increases in the Government's standard mileage rate. Our intention in proposing a change in the method of calculating the adjustment was to do away with the all-or-nothing aspect of the formula 31-point line not to make a change because we wished to make the formula more generous.

3. *Nearest established community—population criterion only.* OMB also proposed to change the definition of "nearest established community" to delete the requirement that the community have minimum essential medical facilities, leaving only year-round population as the sole criterion of an "established community." This change too was overwhelmingly opposed by commenters and accordingly has not been implemented.

The definition of an established community was further modified to eliminate from consideration as established communities those communities that are, broadly speaking, unusual in some way. Thus, we have added a requirement to the definition of an established community that it must have a private rental market with housing available to the general public. This will eliminate communities such as military installations, park communities, and reservations from designation as established communities. The added requirement that medical facilities be available on a nonemergency basis also will ensure that established communities are designated that in fact provide the kind of medical care most quarters occupants require.

Many commenters suggested that the population criterion in the definition be increased, left alone, or reduced, or that we list other services, in addition to medical services. We did not adopt the suggestions to increase or reduce the population figure because the current population figures (1,500 and 5,000 for Alaska) have proved to be acceptable standards. The retention of the medical services criterion in the definition of an established community ensures that the population requirement does not sweep too broadly and qualify communities that are unusually deficient in goods and services.

4. *Pay versus rent.* Pay issues are different from quarters issues. Many commenters described either the difficulty they experience in recruiting or retaining employees to serve in certain remote locations, or their own or their subordinates' limited family budgets. Whether or not Government employees are properly compensated, however, is not an issue that the quarters program may address under current law. Matters relating to overtime work, call pay, being on emergency standby, or public/private employee compensation differences are pay issues. Unusual economic circumstances prevailing where quarters are located are intended to be addressed by cost of living allowances and pay differentials already provided by Congress. On the question of providing for a subsidy for quarters occupants, Congress has simply forbidden it in 5 U.S.C. 5536.

5. *Required occupancy.* Similarly, required occupancy is not a quarters issue. It is only so far as we must determine the proper rent for quarters in which a required occupant must live. We do not make a subjective inquiry whether a required occupant would rather live somewhere else, only whether, using objective methods, the rent for a particular structure has been properly determined. The correct result for the quarters program should be an acknowledgment by all quarters occupants—permitted or required—that, even though they might rather live in other quarters, they are nonetheless paying the correct rent (determined according to prescribed procedures) for the quarters they have been assigned. One commenter suggested that A-45 deal with required occupancy in greater detail. We prefer instead that agency regulations deal with this issue, if they deem it necessary.

6. *Choice of employment or assignment.* There are also certain aspects of living in remote areas that relate to one's choice of employment that Circular No. A-45 cannot address

under current statutory requirements. In remote areas it is possible that there will be a lack of opportunities for working spouses, distant or inadequate local schools, a lack of organized community services, extra transportation expenses, limited newspaper circulation, lack of child care, and limited business delivery services. Available public and private services, as well as commercial goods, simply will never be the equal of those available in larger urban areas. Where employees choose to compete for jobs that inevitably require recurrent changes in duty station, or where such changes are advisable for career advancement, employees may encounter these difficulties and may well also be limited in their ability to build equity in a home. Required occupancy can also be understood in this context. The majority, if not all, required occupancy assignments are identified as such in job announcements and may or may not represent opportunities for advancement for the employee.

A new subsection 5c makes clear that employees have a responsibility to inform themselves of conditions that prevail at prospective duty stations.

7. *Privacy.* The distinction between intrusions relating to official duties and other intrusions has been eliminated. Pursuant to an earlier request for an exception, we have provided for privacy reduction for quarters in or near prisons where normal use of quarters cannot be made by virtue of living areas being within view of inmate population.

8. *Legislative requirements respecting equal treatment of persons occupying quarters.* Public Law 88-459, which provides the legislative underpinning of the quarters program, addressed the problem of agencies' not interpreting then existing law with reasonable uniformity. It also sought to remedy the fact that existing law did not apply to situations where members of the uniformed services and contractor employees occupy Government quarters, among other things. Paragraph 5(b)(3) has been modified to clarify the intent of Pub. L. 88-459, codified at 5 U.S.C. § 5911.

9. *Incorporation of OMB Cir. A-18.* OMB Cir. No. A-18, Policies on Construction of Family Housing, October 18, 1957, was rescinded August 26, 1992, pursuant to OMB's revision of its circular system. Certain portions thereof, relating to construction standards of Federally-owned quarters, have been incorporated in A-45. No change in the policies of A-18 are contemplated in moving certain of them to A-45. Thus, nothing in A-45 is an authorization for construction of new quarters. General policy provisions and

matters relating to budget estimate and reapportionment requests in A-18 have already been moved to OMB Circular No. A-11, Preparation and Submission of Budget Estimates, subsection 12.5(n). Consistent with our policy of primary agency reliance on private housing for employees, we are adding language to subsection 5a to make clear to agencies that if there is no requirement of service or protection pursuant to subsection 12.5(n) of OMB Circular No. A-11, Preparation and Submission of Budget Estimates, then the agency may not acquire or otherwise obtain additional quarters for its employees.

10. *Heating and cooling.* Heating and cooling provisions have been moved from ¶ 7c(6) to ¶ 7b(5) to remove them from operation of the 40% or 50% cap on administrative adjustments in subsection 7c. We do not believe it would be fair potentially to limit the total amount of adjustments available to an employee if part of the expense to the occupant is due to the Government's providing quarters that are excessively expensive to heat or cool.

11. *Phase-in of rent increases.* One commenter recommended that we allow rent increases to be phased in over a longer period of time beginning at a threshold of 25% rather than 50%, or where the total increase in rent is \$25 or more. We adopted this more generous provision in part. As Congress requires that Government quarters rents must be closely connected to private rents, any gap between base rental rates of Government quarters and private rents must inevitably be closed. Allowing for a more generous provision relating to phasing in the necessary changes, however, will help to alleviate the burden employees may encounter in adjusting to rent increases. Note that whether to invoke the phase-in option at all, how long a period to allow for the phase-in, whether to phase in rent increases only for certain pay grades, etc., is solely a matter of agency discretion.

12. *Hazardous road conditions.* Several commenters objected to the removal of hazardous conditions from the isolation adjustment formula. This remained part of the formula inadvertently after the decision was taken in 1984 not to include a provision in the text of the circular relating to hazardous conditions. The ownership or availability of four-wheel drive vehicles and tire chains, as well as of tracked vehicles or heavy multi-passenger vehicles; frequency, timeliness, and adequacy of road clearing operations; terrain; road surface; weather patterns (freezing rain, blizzards, freezes, thaws, wind, temperature); residences or other

shelter close to the road; choice of time of day to travel; and availability of telephone and radio communications all have a bearing on whether road conditions are "hazardous."

Whether or not hazardous conditions prevail is thus clearly not a simple judgement. There are no objective criteria and we do not propose to provide them. To do so would be to inject further complexity into the process of administering the circular, when it is our desire to simplify administration by relying on simple, objective tests wherever possible. We believe, furthermore, that in all but the most extreme cases road clearing operations and/or judicious adjustments to the employee's driving practices will make travel safe even though there will be times when temporary extremes of weather will make any road impassible or extremely dangerous. Furthermore, the different road surfaces and modes of transportation in the isolation adjustment formula implicitly recognize degrees of hazard.

13. *Amenity adjustments.* Numerous suggestions for adding amenity adjustments or increasing their value were received. We did not adopt those because we believe the available amenity adjustments are sufficient. The lack of nearby video rental stores, rural mail delivery, or adequate mechanical service professionals, as well as the higher cost of some goods and services (including utilities) in some locations are all problems likely to be encountered in remote locations that are not amenable to solution by agency action. We believe agencies and/or quarters occupants should deal with the lack of cable TV reception by installing satellite reception systems, rather than Cir. A-45's providing for an amenity adjustment. The isolation adjustment is also intended to result in rental rates in remote areas that reflect these conditions likely to be found in remote areas.

14. *Profit.* Some commenters stated that the Government should not make a profit and therefore should not base rents on private sector rents that do include the element of profit. Government quarters rents are required to be based on rents in the private sector. Far from seeking a profit, the Government does not even seek to recover the actual cost of providing quarters. In fact, it allows for reductions as large as 50-60% to be made for market-based quarters rents. Most agencies in the quarters program do not recover all of the costs to them of maintaining quarters for their employees, especially those agencies that provide quarters to seasonal

employees who do not pay rent year round but which must still maintain the quarters in question.

15. *Standards.* Portions of new section 8 of the circular, which incorporates portions of now rescinded OMB Cir. No. A-18, were amended to conform Federal policies to the modern standards. Thus, a specification of the number of baths permitted for two-story structures has been added at the request of officials in the Department of Defense. The wet-bulb and dry-bulb temperature standards of the American Society of Heating, Refrigeration and Air Conditioning Engineers "A Manual of Recommended Practices" will also now apply, and thus simplify the engineering calculations in determining whether or not air conditioning may be installed (subsection 8f). The reference to an outdated booklet of design standards has been replaced by a reference to the Uniform Building Code (subsections 8g and 8h).

16. *Other matters.* The changes briefly mentioned in the November 22, 1991, notice in the *Federal Register* under the heading of "Other changes" have all been made in the final circular. Numerous editorial changes were made. Suggestions that appeared to be limited in their scope have not been addressed here or adopted in the circular.

Date: October 20, 1993.

Allan V. Burman,
Administrator, Office of Federal Procurement
Policy.

Circular No. A-45 (Revised)

To the Heads of Executive Departments
and Establishments

Subject: Rental and Construction of
Government Quarters

1. Purpose

This circular sets forth policies and administrative guidance to be used by executive agencies in establishing and administering rental rates and other charges for Government rental quarters and related facilities located within the fifty states, the District of Columbia, and the territories and possessions of the United States. It also sets forth policies and administrative guidance to be used by executive agencies respecting construction of Federally-owned housing (exclusive of military barracks) for civilian and military personnel, as well as for employees of Government contractors, whether provided on a rental basis or free of charge, both in the United States and overseas. This circular does not deal with determinations of whether construction of housing is appropriate, for which please see Office of Management and

Budget (OMB) Circular No. A-11, Preparation and Submission of Budget Estimates, § 12.5(n).

2. Background

The policies and procedures of this circular have been revised pursuant to section 9 of the 1984 version of the circular. Portions of OMB Circular No. A-18, Policies on Construction of Family Housing (rescinded August 26, 1992), have been incorporated into section 8 of this circular.

3. Rescission

This rescinds OMB Circular No. A-45, dated March 28, 1984, as amended, and incorporates portions of rescinded OMB Circular No. A-18, Policies on Construction of Family Housing, October 18, 1957.

4. Authority

This circular is issued by virtue of the authority vested in the President by 5 U.S.C. 5911(f), and delegated to the Director of the Office of Management and Budget by section 9 of Executive Order 11609 of July 22, 1971; by 31 U.S.C. 1111; and by section 2(d) of Executive Order 8248 of September 8, 1939 and section 1 of Executive Order 11541 of July 1, 1970.

5. Policy

a. *Reliance on private housing market.* It is the policy of the Federal Government to rely on the private housing market to provide housing for its civilian employees. If there is no requirement of service or protection or if there is no lack of available housing, as discussed in OMB Circular No. A-11, Preparation and Submission of Budget Estimates, sections 12.5(n)(2) and (3), agencies must not acquire additional rental quarters.

b. *Determination of rents.* Agencies of the Federal Government must adhere to the following in determining rental rates for Government rental quarters:

(1) Reasonable value to employee. Rental rates and charges for Government quarters and related facilities will be based upon their "reasonable value * * * to the employee * * * in the circumstances under which the quarters and facilities are provided, occupied or made available." 5 U.S.C. 5911. As intended by the Congress, reasonable value to the employee or other occupant is determined by the rule of equivalence; namely, that charges for rent and related facilities should be set at levels equal to those prevailing for comparable private housing located in the same area, when practicable; and

(2) Subsidies, inducements prohibited. Federal employees whose pay and allowances are fixed by statute or regulation may not receive additional pay and allowances for any service or duty unless specifically authorized by law. 5 U.S.C. 5536. Consequently, rents and other charges may not be set so as to provide a housing subsidy, serve as an inducement in the recruitment or retention of employees, or encourage occupancy of existing Government housing.

(3) Fairness, consistency. When properly determined in accordance with the provisions of this circular, rental rates will be fair as between the Government and the employee (or other authorized occupant) and as between employees of different agencies living in the same installation in similar housing, or employees living in Government quarters at different installations. Rents should not be set so as to serve as an inducement to recruit or retain employees. Moreover, rents should reflect a consistent local pattern for all Federal quarters in a given location.

c. *Employee responsibilities.* Employees have a responsibility to inform themselves of all the conditions that prevail in and near the quarters and duty stations to which they might be assigned before accepting transfer to or employment at such duty stations.

6. Definitions

a. *Agency.* As defined in Public Law 88-459, 78 Stat. 557 (1964), the term "agency" means (1) each executive department of the Government; (2) each agency or independent establishment in the Executive Branch of the Government; (3) each corporation owned or controlled by the Government, except the Tennessee Valley Authority; and (4) the General Accounting Office.

b. *Air conditioning.* The process of cooling air either through evaporation of water (evaporative cooling) or refrigeration (mechanical or absorption), and the distribution of such air.

c. *Base rental rate.* The base rental rate is the rental value of the quarters, established in accordance with the provisions of this circular, before applying any administrative adjustments or charges for related facilities.

d. *Comparable housing.* Comparable housing is housing in the private sector that is generally equivalent in size to the rental quarters, with the same number of bedrooms, and with generally equivalent amenities and related facilities. Such housing is housing available on a landlord-tenant basis, with rental rates reflecting the fair market value of the accommodations.

This is distinguished from housing rented on an "employer-employee" basis or between friends and relatives, for which other considerations may have influenced the rental rates. In addition, other Government rental housing (Federal, State or local) and housing provided by churches or religious societies are excluded from this definition of comparable housing.

e. Construction. "Construction" includes conversions of structures for dwelling purposes.

f. Established community. An established community is ordinarily the nearest population center (Metropolitan Statistical Area or an incorporated or unincorporated city or town) having a year-round population of 1,500 or more (5,000 or more in Alaska), provided that it has minimum essential medical facilities (i.e., at least one physician and one dentist) available to all occupants of Government quarters on a nonemergency basis and a private rental market with housing available to the general public. Population determinations will be based upon the most recently published decennial census of the United States.

g. Net area. For purposes of construction of quarters, the net area of a dwelling is the space inside exterior or party walls, excluding only attic, garage, and basement (or service and storage space in lieu of basement).

h. Reasonable value. Reasonable value for rental quarters is to be measured by the test of equivalence, i.e., what the employee would pay for comparable housing in the open market. Rental rates, including charges for related facilities when appropriate, will be based upon prevailing rates for comparable private housing located in the same general area, after taking into account those factors that reduce or increase the value of the housing to the tenant.

i. Related facilities. Related facilities are equipment, supplies and services made available in connection with the occupancy of quarters including, but not limited to, household furniture and equipment, garage space, utilities, subsistence, and trash and laundry services.

j. Rental quarters. Except as specifically excluded herein or by statute, the term "rental quarters," includes all furnished and unfurnished quarters supplied under specific government authority to Government employees, contractors, contractor employees, and all other persons to whom housing is provided as an incidental service in support of Government programs. It includes, but is not limited to, Government-owned or

-leased dwellings, apartments, bunkhouses, dormitories, trailer pads, cabins, guard stations and lookouts, mobile homes, house trailers, and housekeeping as well as nonhousekeeping units. The term excludes tents, containers, housing which due to extreme deterioration is unsuitable for occupancy except in exigent circumstances, and "public quarters" designated for occupancy by members of the uniformed services with loss of allowances, but it includes quarters occupied by such personnel on a rental basis under 37 U.S.C. 403(e), 42 U.S.C. 1594a(f) and 1594b, and other authorities.

k. Room. A room is a living space such as a living room, bedroom, kitchen, finished attic or basement, or other suitable living space. A half room is a small space used for living purposes, such as a dinette, breakfast nook, dressing room, or reception room. No count is made of bathrooms, strip or pullman kitchens, halls or foyers, alcoves, pantries, laundries, storage or utility rooms, or unfinished attics and basements.

7. Procedures for Determining Rents and Other Charges

a. Charges for quarters. The determination of reasonable value of Government rental quarters will be based upon an impartial study of comparable private rental housing. There are two methods that may be employed to determine the base rental rate. The first, an appraisal, involves direct comparison with individual private rental housing units. The second, the regional survey, creates a series of economic models based upon a survey of comparable private rental housing throughout the region. While both methods are accurate, agencies are encouraged to utilize the survey method, whenever possible, due to the costs and administrative burdens associated with conducting individual appraisals. Both methods are subject to the conditions and limitations set forth below.

(1) Appraisals.

(a) Urban and suburban locations. If Government quarters are located in or within five miles of an established community, in an urban or suburban location, the base rental rate may be determined by either a staff or contract appraiser, applying recognized real estate valuation principles.

None of the administrative adjustments provided in subsection 7c will be made for isolation, site amenities, space devoted to official use, or excessive heating or cooling costs when an appraisal is made in an urban

or suburban location. These factors, if appropriate, will already have been considered by the appraiser in the appraisal process. Adjustments, suitably documented, may be made by agencies when an appraiser has not considered or incorrectly calculated the effect of these factors.

(b) Rural areas. When the appraisal method is used to determine the reasonable value of quarters that are not located in, or within five miles of, an established community, it will be subject to the following limitation: To ensure a uniform approach to valuation when conducting an appraisal in such areas, the staff or contract appraiser will be limited to comparing the Government rental quarters with housing in the nearest established community. (If the nearest established community does not contain sufficient comparables or is unduly affected by severe economic conditions, the appraiser may select comparable rental units from the next closest established community that does have sufficient comparables or does not have a severely deflated or inflated housing market.) Such comparison will be limited to adjustments for the physical differences in the housing. The appraiser in such circumstances will not make adjustments for location (isolation) or for the absence of site amenities. These adjustments, if applicable, will be made administratively in the same manner as authorized for regional surveys in §§ 7c(1) and 7c(2).

(2) Regional surveys. Regional surveys may be used in all locations where Government quarters are located. If the regional survey method is used, the base rental rates will be set by means of a series of economic models that utilize typical rental rates for comparable private rental housing in the established communities nearest to the sites in which the Government quarters are located. (If the nearest established community does not contain sufficient comparables or is unduly affected by severe economic conditions, the survey may utilize comparable rental units from the next closest established community that does have sufficient comparables or does not have a severely deflated or inflated housing market. The actual analysis of rental data for the establishment of base rental rates may be accomplished using appropriate statistical techniques, such as step-wise multiple regression.)

To avoid duplication and inconsistent rates, all agencies with quarters in a given location should coordinate their survey plans and conduct a single survey applicable to all. The area selected for survey should be large

enough to permit an adequate sampling of comparable rental properties in several established communities and may encompass one or more states. Ideally, the survey would establish the rental rates for a large number of Government quarters and thereby reduce the cost per unit surveyed. The methods of analysis must be capable of recognizing both the physical characteristics and the differences in economic conditions, and reflecting such differences in the base rental rates. Private rental housing samples reflecting extremely high or low rental rates should be excluded from the data base subjected to final analysis. Appropriate adjustments may be made to the base rental rates established for quarters in accordance with the provisions of subsection 7c.

(3) Agency review. Regardless of the method used, results of surveys and appraisals will be reviewed by the agency prior to implementation to assure that they are fair and reasonable, and that they were developed in accordance with the provisions of this circular. In those communities where the rental rates are extremely high or low, the rental housing market should be reviewed periodically between surveys to determine whether changes in the private rental housing market warrant revision of the base rental rates for the quarters located near those communities.

b. Charges for related facilities and costs.

(1) Utilities. It is Government policy to minimize energy consumption. Consumption has been found to decrease when occupants of Government rental quarters are required to pay for the actual cost of utilities used (such as electricity, oil, natural gas, propane, coal, telephone, cable television, water and sewer). Utilities should be furnished by a private company and billed directly to the occupant, wherever possible.

When Government furnished utilities are provided, they should be metered or measured, where practicable. The rate for utilities furnished by the Government will be the same as the residential rate for these utilities in the nearest established community (when the appraisal method is used) or survey area (when the survey method is used) used in determining the base rental rate. The consumed amount of Government furnished utilities that are individually metered or measured will be determined by actual readings.

When Government furnished utilities are not individually metered or measured, consumption will be determined on the basis of an analysis

of the average amounts of utilities used in comparable private rental housing in the nearest established community (when the appraisal method is used) or survey area (when the survey method is used). (Such estimates are usually available from local utility companies.) Alternatively, consumption may be determined using engineering tables (such as design heat loss tables from the American Society of Heating and Refrigeration Engineers) and meteorological records. Normally, utility charges will be clearly shown and separated from rent charges. Utility charges may be combined, however, in one charge for nonhousekeeping rooms. Where it is impractical to shut off heat and electricity to unused rooms and the employee is otherwise entitled to the reduction in § 7c(5) for quarters of excessive size, a proportionate reduction in the utility charges based on the area of the unused quarters may be made.

(2) Furnishings. If there is an inadequate market of comparably furnished housing for purposes of comparison with furnished Government quarters, the rents on otherwise comparable unfurnished private units may be used as the base and adjusted by a reasonable charge for furnishings. This adjustment should be based on actual replacement costs allocated over the useful life of the furnishings.

(3) Other services. Charges for other services provided by the Government including, but not limited to, laundry, trash and garbage removal, lawn care and snow removal will be based upon prevailing rates for such services in the nearest established community (when the appraisal method is used) or survey area (when the survey method is used).

(4) Adjustments to obtain base rental rate. Where the rental charge for comparable housing includes the values of utilities, furnishings, or other services, downward adjustments to obtain the base rental rate will be based on the prevailing rates for such utilities, furnishings, and other services in the nearest established community (when the appraisal method is used) or the survey area (when the survey method is used). The value of furnishings and other services may be based upon national average costs where such data are available.

(5) Excessive heating or cooling costs. A deduction from the rental rate is permissible if quarters require an unreasonable additional expense to the employee for heating or cooling because of poor design, the lack of all-weather construction, or other related factors. The amount of the deduction will be determined as follows: If the rental

quarters in question require expenses to the occupant in excess of 25 percent for the heating or cooling season over the average of heating or cooling for comparable housing in the same area and climate zone as determined by a suitable survey or appraisal, the head of agency may determine that the excessive costs (i.e., those in excess of 25 percent over the average) may be deducted from the annual rental rates.

c. Administrative adjustments. Additional adjustments in the form of deductions from the base rental rate are appropriate in the specific situations described below. The total amount deducted for all reasons must not be excessive, resulting in a rental rate to the occupant that is less than the reasonable value of the quarters, since this would constitute a supplementation of salary in contravention of law. The rental rate, after all adjustments, must not be less than 50 percent of the base rental rate, unless an adjustment for isolation has been made. In such instances, the rental rate may be set at not less than 40 percent of the base rental rate.

(1) Isolated locations. In some cases, the Government supplies quarters in locations where minimal community services are available but only at some distance from the quarters. In addition, travel conditions or mode of transportation may serve further to isolate some employees from minimal community services. In such situations, the agency shall grant a reasonable adjustment to ameliorate the direct economic effects of the isolation, utilizing the procedure described below and in the appendix.

The nearest established community will be used as the community for calculating the deduction, even though that community may not serve as the location of the comparable private rental housing used in establishing the base rental rates. The mileage used in computing the adjustment will be the shortest route usually traveled from the rental quarters to the center of the nearest established community. If that route is closed seasonally, a weighted average adjustment will be used for the entire year, based upon the number of months each route would ordinarily be used.

The adjustment is designed to recognize different categories of highways and modes of transportation. Because of the range of possible travel conditions and modes of transportation, point values have been assigned to each category of transportation. These point values represent differences in time, cost, or both, associated with each mile of each category of transportation from

the quarters to the nearest established community.

The point values are multiplied by the number of one-way miles from the quarters to the nearest established community, to produce one-way points. When travel from the quarters to the nearest established community involves more than one category of transportation, the one-way miles are distributed accordingly. When the category of travel is category 4 or 5 on the Isolation Adjustment Computation form in the appendix, 29 and 27 points are added, respectively, to the product of columns A and B. The one-way points in each category are then added to produce total one-way points, which must exceed 30, or there is no adjustment. Finally, the total adjusted points for all modes of transport are multiplied by an Isolation Adjustment Factor (based on the automobile mileage allowance determined by the General Services Administration) to produce the monthly dollar adjustment.

(2) *Site amenities.* Living conditions at the locations of some Government housing are not always the same as those found in or immediately adjacent to the survey or appraisal communities. In such communities, the amenities listed below are generally present and their contributory value included in the base rent. The lack of availability of any of these items at the quarters location represents a generally less desirable condition that should be reflected as a negative percentage adjustment to the base rental rate, as shown below.

(a) *Reliability and adequacy of water supply.* The system should provide potable water (free of significant discoloration or odor) at adequate pressure at usual outlets. (No more than a -3 percent adjustment can be made for this category.)

(b) *Reliability and adequacy of electric service.* Service must equal or exceed a 100-ampere power system capable of providing 24-hour service under normal conditions. (Occasional temporary outages are considered normal.) If an adequate backup generator is available, the amenity will be rated as present regardless of the reliability of the primary power source. (No more than a -3 percent adjustment can be made for this category.)

(c) *Reliability and adequacy of fuel for heating, cooling and cooking.* There should be sufficient fuel storage capacity to meet prevailing weather conditions and cooking needs. Where electricity is used to heat, cool, or cook, this adjustment is to be made only when the deduction in (b), above, applies. (No more than a -3 percent adjustment can be made for this category.)

(d) *Reliability and adequacy of police protection.* Law enforcement personnel, including Government employees with law enforcement authority, should be available on a 24-hour basis. Availability is defined as the ability to respond to emergencies as quickly as any officer in the nearest established community. Part-time officers are not necessarily unable to meet this test of availability. Gaps in availability due to temporary illness or injury, use of annual leave, temporary duties, training, or other short absences, do not render law enforcement personnel "unavailable" at the Government quarters. (No more than a -3 percent adjustment can be made for this category.)

(e) *Fire insurance availability or reliability and adequacy of fire protection.* Fire insurance should be available with the premium charge based upon a rating equal to the rating available to comparable housing located in or adjacent to the nearest established community, or, in the alternative, adequate equipment, adequate water (or fire retardant chemical) supply, and trained personnel should be available on a 24-hour basis to meet foreseeable emergencies. If either element is present, i.e., adequate insurance or an adequate fire fighting capability, no adjustment may be made. (No more than a -3 percent adjustment can be made for this category.)

(f) *Reliability and adequacy of sanitation service.* An adequately functioning sewage disposal system and a solid waste disposal system, whether community or individually provided, should be available. Individual sewage disposal systems (septic, cesspool, or other) will be considered adequate even though they may require periodic maintenance, as long as they are usable during periods of occupancy. (No more than a -3 percent adjustment can be made for this category.)

(g) *Reliability and adequacy of telephone service.* Twenty-four-hour accessibility to commercial telephone facilities should be available. A deduction of 3 percent is authorized if telephone service is unavailable both within the employee's quarters and within 100 yards of the quarters. A deduction of 2 percent is authorized if there is no telephone service within the employee's quarters, but telephone service (either private or party line) is available within 100 yards of the quarters. A deduction of 1 percent is authorized if telephone service is available in the employee's quarters, but is not private line service and/or is not accessible on a 24-hour per day basis.

(h) *Noise and odors.* There should be an absence of significant, frequent disturbing noises or offensive odors. (No more than a -3 percent adjustment can be made for this category.)

(i) *Miscellaneous improvements.* One or more of the following improvements should be present: paved roads, sidewalks, or street lights. (No more than a -1 percent adjustment can be made for this category.)

(3) *Impositions on privacy or living space.* Administrative adjustments in the base rental rate are allowed if the living space or privacy of the occupant is restricted. In each such case, the agency will make a special determination of the specific conditions making certain that the conditions have not already been reflected in establishing the base rental rate.

(a) *Loss of privacy.* If occupants are subject to loss of privacy during nonduty hours by virtue of repeated public visits (i.e., occurring several times daily) or inhibited from enjoying the full range of activities normally associated with rental occupancies (such as where restrictions are imposed on activities in quarters in or near national cemeteries or where quarters are within view of prison inmates), a deduction not to exceed 10 percent of the base rental rate is allowable. Proportional deductions will be made in situations of less frequency or seriousness in their impact upon privacy or usage or to reflect seasonal variations.

(b) *Space devoted to official use.* When the agency determines that the use of a portion of the quarters is required for official business (i.e., office, storage, etc.), loss of living space should be reflected by an adjustment to the base rental rate, based on the square footage occupied.

(4) *Transient and temporary use of quarters for other than temporary duty assignments and uniformed service members on permanent change of station.*

(a) *Transient quarters.* Charges for quarters occupied on a transient basis, that is, normally for 90 days or less, will be assessed at rates equivalent to private transient housing of comparable type and quality. These rates may be set on a nightly or weekly basis, or both. If comparable private transient housing does not exist in the area, the rental may be established by determining the reasonable monthly rental rate for the quarters through application of the other provisions of this circular, and adding to the monthly rate an additional charge of at least 20 percent to cover necessary additional administrative and service charges. The total will be divided by 30

days for the nightly rate or 4½ weeks for the weekly rate.

(b) *Temporary quarters.* This adjustment will apply when an employee occupies quarters for the convenience of the Government on a temporary basis (normally more than 60 days) and does not receive per diem. Under these circumstances, if the employee maintains two households, the agency is authorized to adjust the rental rate on the quarters unit so that the combined rent or rent and mortgage payment paid during the period of occupancy is not excessively burdensome. The adjustment may not exceed 20 percent of the base rental rate of the quarters unit, unless the agency determines that the circumstances fully justify a greater deduction.

(5) *Quarters of excessive or inadequate size or quality.* If there is a lack of housing of appropriate size or quality, an employee may be provided Government quarters of a size or quality either excessive or inadequate to that which the prudent employee would have selected in the private community. In these exceptional circumstances, the base rental rate will be reduced by up to 10 percent in direct proportion to the degree of the excess or deficiency. This reduction will not continue beyond one month after the availability of either appropriate Government rental quarters or private rental housing, except when the agency determines that the reassignment of quarters will not benefit the Government.

(6) *Changes in administrative adjustments.* For specific quarter rental rates, agencies should implement new administrative adjustments to reflect changes in any of the factors contained in subsection 7c as soon as possible after learning of those changes, normally within 30 days.

d. *Cyclical and annual adjustments; newly acquired quarters.* Charges for rental quarters and related facilities shall be adjusted periodically in accordance with the following:

(1) *Adjustments based on surveys or appraisals.* Base rental rates established for rental quarters shall be affirmed or adjusted by a survey or appraisal of the private rental market, as follows:

(a) At least every fifth year or when the base rental rate for the quarters has been increased by 40 percent through application of the rent series of the U.S. City Average Revised Consumer Price Index for Urban Wage Earners and Clerical Workers, Rent Series, whichever occurs first, or

(b) Any year when changes in the private rental market in the nearby established community indicate a need to adjust base rental rates on the basis

of a survey or appraisal of the rental market.

(2) *Adjustments based on changes in the CPI.* Annual adjustments in the base rental rate shall be made by applying the percent change in the CPI Rent Series from the month and year that the last regional survey or reappraisal of the private rental market was conducted. The new rates shall be effective at the beginning of the first pay period that starts on or after March 1 of each year. Though effective in March, the adjustment shall be based on the preceding September CPI data to provide the required lead time.

(3) *Annual adjustments for isolation.* The Isolation Adjustment Factor (currently 1.9) will be recomputed each year to reflect the Government mileage allowance for automobiles published by the General Services Administration as of the last day of September each year. The new isolation adjustment factor will be used to compute the monthly isolation adjustment applicable to rents being charged starting with the first full pay period in March of each year. This is done to coincide with the implementation of rental rates adjusted by the CPI Rent Series each year, as required in § 7d(2) of this circular.

(4) *Annual adjustments of utilities, furnishings, and services.* To ensure that rates for Government furnished utilities, furnishings, and services keep pace with current costs, they shall be adjusted annually. Where appraisals are used, the rate will be the average residential rate for the utility, furnishings, and services in the nearest established community as of the last day of September. Where surveys are used, utility costs will be adjusted by amounts coinciding with the changes in the appropriate components of the September Consumer Price Index for Urban Wage Earners and Clerical Workers: Nonfood Expenditure Categories, Seasonally Adjusted, U.S. City Average. The adjusted value of furnishings and other services may be based upon local or national average costs. The new changes will be effective at the beginning of the first pay period that starts on or after March 1 of each year.

(5) *Periodic/cycle year adjustment.* The cycle year (and survey or appraisal month within the cycle year) occurs at different times for different employee quarters within an agency. Therefore, since annual CPI adjustments effective in March are based on the preceding September CPI data, cycle year adjustments for any particular quarters or facility shall be made as follows:

(a) When the private rental market survey or appraisal is made during the months of September through February,

no CPI adjustment will be made on March 1 of the following year, but will be deferred until the start of the first pay period that begins after March 1 of the following year. Rental adjustments based on the survey or appraisal will be put into effect in the usual manner. Example: If the survey month is October 1989, no CPI adjustment will be made in March 1990, but will be deferred until March 1991. Such CPI adjustments will be based on the changes in the CPI from the actual date of the survey through September 1990.

(b) When the private rental market survey or appraisal is made during the months of March through August, no CPI adjustments will be made in March of that year, but will be deferred until the start of the first pay period that begins after March 1 of the following year. Rental adjustments based on the survey will be put into effect in the usual manner. Example: If the survey month is April 1989, no CPI adjustment will be made in March 1989, but will be deferred until March 1, 1990. Such CPI adjustment will be based on the changes in the CPI from the actual date of the survey through September 1989.

(6) *Newly acquired quarters.* Rates for newly acquired quarters shall be the same as those prevailing for similar Government rental quarters in the area. If there are no established rates, an initial survey or appraisal to establish valid and realistic comparability with private rental housing shall be made upon acceptance of newly acquired quarters, and the corresponding rental rates shall be made effective upon occupancy. The initial CPI adjustment in rental rates shall be made as follows:

(a) When the initial survey or appraisal of the private rental market is made during the months of March through August, the initial CPI adjustment will be made at the start of the first pay period that begins after March 1 of the following year.

(b) When the initial survey or appraisal of the private rental market is made during the months of September through February, the initial CPI adjustment will be made in accordance with the procedure set forth in subparagraph (5)(a), above.

(7) *Incremental adjustments.* If new appraisals, surveys or CPI adjustments result in increases in rental rates of 25 percent or more above the current rental rate, such increases may be imposed incrementally over a period not to exceed one year, on the condition that they be applied in equal increments on at least a quarterly basis.

e. *Qualifications and extensions.* The principle of comparability with private

rental practice may be modified under the conditions described below:

(1) Extension of comparability. For lack of available alternative quarters, employees must sometimes occupy space for use as quarters that is generally unsuitable for that purpose. Such space may be unsuitable, for example, because it was originally built for seasonal occupancy only, or because it was not originally built for use as quarters. In other instances, quarters may be suitable only for particular types of occupancy, such as rooming houses, bunkhouses, bachelor quarters, residence hotel-type structures, barracks-type structures, or guard stations and lookouts.

In all such cases, if no comparable rental data can be obtained or professional appraisals are not made, rental rates will be determined by the square footage occupied, at a rate equivalent to one-half the base rental rate per square foot charged for the nearest adequate rental quarters of the same or any other Federal agency. This rate will apply only to the shelter rental, with additions thereto for all other related facilities at rates comparable to those in the area. Rental and other charges will be based upon desired capacity and, when so determined, will remain in effect for each occupant without regard to fluctuations in the number of occupants from time to time either above or below designed capacity.

In buildings where space is assigned for occupancy of several persons or families, common-use space in the building will be distributed to all occupants in proportion to the space assigned for the sole occupancy of each, to determine the number of square feet chargeable to each. Common-use space includes, for example, washrooms, stairs, hallways, and storage, lobby, and lounge areas.

(2) Quarters for uniformed service personnel. Rental rates and other charges incident to the occupancy of quarters on a rental basis by members of the uniformed services will be established in accordance with the provisions of this circular.

Those quarters that have been designated inadequate public quarters or substandard pursuant to law and regulations of the Surgeon General of the Public Health Service and the Secretaries of Defense and Transportation require special treatment in one respect. The total of the rental rate, plus charges for furniture and utilities (except telephone), will be adjusted, if required, so as not to exceed 75 percent of the member's basic allowance for quarters. The rental rate, as used in the preceding sentence, is the

rate obtained after the additions or deductions required or authorized elsewhere in this circular have been applied to the base rental rate, including that requirement contained in subsection 7c, that the rental rate, after adjustments, will not be less than 50 percent of the base rental rate.

(3) Instances of hardship. In certain hardship cases where continued occupancy of public quarters by former uniformed service members and dependents or by dependents of deceased service members is permitted, an amount equivalent to the member's full basic allowance for quarters and other housing allowances (i.e., Variable Housing Allowance, etc.) may be charged for such periods of time as may be properly allowed in each particular case. Occupancy of quarters in such instances will normally not exceed 60 days.

Similarly, former Federal employees (or other occupants) and dependents, or dependents of deceased Federal employees (or other occupants), may continue to occupy Government rental quarters for a period normally not to exceed 60 days. Such occupants will continue to pay the established rental rate for those quarters.

(4) Alternative requirements. The provisions of this circular will not apply in the following instances:

(a) When employees attend training programs at Federal or private facilities and the cost of housing is factored into the program cost to the agency or through other means, the valuation rules of this circular need not be applied, so long as the per diem rate (or actual per diem expense rates) paid the employee is set to reflect the fact that the housing is provided at no cost to the employee. In other than training situations when employees are receiving per diem (or actual per diem expense rates) and occupying Government housing, the per diem paid the employees is set to reflect the fact that the housing is provided at no cost to the employee.

(b) When employees are receiving a remote worksite commuting allowance, in accordance with 5 U.S.C. 5942, and housing is provided at no cost to the employees, the allowance paid will consist of factors other than the housing cost portion of the allowance.

(5) Exceptions. Efforts have been made in the preparation of this circular to allow for unusual circumstances that may exist with respect to rental quarters. Exceptions to the requirements included in this circular will be permitted, therefore, only upon written request and in those very unusual circumstances when it is demonstrated to the Office of Management and Budget

that the application of the provisions of this circular will not result in a rental rate equivalent to the reasonable value of the quarters to the occupant. If an exception is granted by the Director of the Office of Management and Budget, the agency concerned will be notified in writing.

8. Construction of Federally-Owned Housing

Unless otherwise provided by law (e.g., 10 U.S.C. 2826), the following provides guidance to agencies on determining housing construction needs and construction standards:

a. Determination of number of families to be housed and pattern of housing required. The agency should determine the number of families to be housed under the particular circumstances and the probable pattern of family size and composition by a statistical study of families and numbers of dependents within the service or agency adjusted for agency experience, changes in staffing patterns, and national trends in family size. Most frequently, the agency will be adding a limited number of houses at a station where some housing already exists. Under these circumstances, the agency should first make certain that existing housing (owned, leased, or otherwise available to the agency) is properly assigned. After ascertaining that there is a proper utilization of existing housing, the agency should determine what further construction, if any, is required to establish a proper pattern of housing at the station. The determination must discount temporary and unusual peak numbers of employees at the station, but not necessarily recurring requirements for seasonal employees who must be housed. Three general situations with basically different housing requirements are likely to occur:

(1) Small station. Where only one to five Government houses are to be supplied at a station, it is likely that no stable family pattern can be predicted on a statistical basis. The most reasonable method of meeting the housing requirement under these circumstances is to supply three three-bedroom houses, one two-bedroom house, and one four-bedroom house.

(2) Medium station. Where five to 25 Government houses are to be supplied, the group is probably still too small to expect a stable family pattern, but the group is too large to permit building all houses the same size. Under these circumstances, the agency should seek to develop a flexible housing supply, if possible. However, in view of family size trends, it would be best to construct mostly three-bedroom houses, with a

smaller number of two-bedroom houses, and a few four-bedroom houses.

(3) Large station. Where more than 25 Government houses are to be supplied, it is reasonable to expect that a fairly stable family pattern exists. Under these circumstances, the agency should determine what this pattern is, as described above, and, utilizing Table 1, below, plan to provide the appropriate

number and distribution of rooms. At military installations the probable number of personnel entitled to family housing quarters by grade, rank, and position will determine the family housing requirements. In the table of net floor areas given below, Table 1, the normal construction limits will govern the maximum areas of houses to be constructed, except that agencies may

construct up to the statutory or maximum limitation for housing for commanding officers and in unusual circumstances. The numbers of rooms will be governed by Table 1, below, showing the relation between number of bedrooms and net square footage areas. OMB will consider exceptions under special circumstances only when fully justified.

TABLE 1.—NUMBER OF ROOMS

Persons in household	Rooms to be provided	Bed-rooms	Baths—One-story	Baths—Two-story
2-3	4	2	1	1 or 1½
4	5, 5½, or 6	3	1 or 1½	2 or 2½
5	5½, 6, or 7	3 or 4	1½ or 2	2 or 2½
6	7	4	2	2 or 2½

b. Types of family dwellings to be constructed. Family dwellings similar in type to acceptable dwellings normally built in the local area will be constructed whenever practicable, with full advantage being taken of the economy of construction and maintenance of multiple-family dwellings—apartment, row, or duplex. The construction of single-family dwellings may receive special consideration in locations where remoteness of the station from other community facilities makes it undesirable from the standpoint of safety, employee morale, recruitment and retention of personnel, and satisfactory living conditions under adverse circumstances to house employees in multiple-family dwellings.

c. Prospective rental levels and their effect on construction. The type of dwellings to be constructed will also be

governed by the amount of rent that the occupants can afford to pay (public quarters excepted) as determined in accordance with this circular. Hence, care must be taken to ensure that dwellings would rent at rates within the reach of employees to be housed. In cases where there are large numbers of high-salaried personnel who would normally rent larger houses than are usually provided on the station and where the ability to hold such employees in Government service may be dependent upon the housing available, agencies may construct a limited number of larger houses upon securing specific advance approval from OMB.

d. Determination of the number of rooms to be provided in family housing. The number of rooms to be provided must be based on the size and normal composition of families to be housed.

Consideration should be given to the trends in family size. It is permissible to provide larger houses for civilian directors or military commanders of large stations, for military officers of general or flag rank, chiefs of Foreign Service missions, Foreign Service officers with the rank of career minister, and to a limited extent, for higher salaried personnel who can afford to and will pay commercially comparable rents for superior quarters. Table 2, below, indicates the number of rooms and bedrooms that should normally be planned for families of varying sizes. Again, OMB will consider justified exceptions depending upon the remoteness of the small or medium station and the extent to which the family is isolated from normal community facilities.

TABLE 2.—MAXIMUM AND MINIMUM NET FLOOR AREA PER DWELLING UNIT

	1 Bedroom ¹	2 Bedrooms	3 Bedrooms	4 or more Bedrooms
Minimum ²	550 sq. ft	≈750	≈960	≈1,190
Normal ⁴	730	1,000	1,415	1,670
Maximum	810	≈1,250	≈1,670	≈2,100

¹ For multi-family or apartment construction only. No one-bedroom houses should be built.

² Any construction proposed to provide less square footage than these minimums must be specifically approved by OMB.

³ Applies to flats or multi-family construction. Not recommended for single or duplex houses.

⁴ Budget estimates will not be considered for construction beyond these normal limits unless accompanied by a specific determination of the agency that up to the specified maximums are necessary.

⁵ Applies to single-family houses without basements for higher salaried personnel only.

⁶ Applies to single-family houses without basements for higher salaried personnel only. Larger areas may be considered by OMB on special justification for heads of large stations, flag officers, or in unusual circumstances only.

e. Net areas of houses. The net areas shown below in Table 2 may be increased 10 percent (a) if outside the continental United States, (b) for commanding officers or civilian heads of large installations, or (c) under conditions of extreme isolation where

the family may be confined to the home for long periods due to weather conditions or lack of community facilities within reasonable distance. The minimum floor areas below represent the limit below which it is not deemed advisable to go when building

permanent housing; such minimum areas should be used only for multiple-family dwellings. Maximum floor areas represent the limit above which Federal funds need not be invested to provide housing reasonably commensurate with

income for all but the highest income groups.

Although agencies cannot always determine the grades of the occupants, there is a normal range of grades for the personnel who are required or permitted to occupy Government housing on the station. The minimum size for the number of bedrooms needed should be provided for those in the lowest grades in order that the housing may not be more expensive than the occupants could be expected to rent if they were securing their own quarters commercially. Larger quarters may be provided for progressively higher grades up to the maximums for personnel at and above general schedule grade 14 and ranks equivalent to the military rank of colonel.

f. Special features. Special features may be provided to meet special work or isolation conditions. These include: extra rooms with outside doors for the employee whose home is also his or her work headquarters; special access to bath or shower rooms without going through the house where the employee's work is particularly dirty and shower facilities are not provided in work buildings; fireplaces in remote areas where wood is readily available and the fireplaces would serve a practical purpose; extra storage space and facilities where distances to market are such as to necessitate purchasing food and other supplies in quantity; and some space for recreation purposes where families may be confined to the house for long periods of time during bad weather conditions.

Air conditioning may be installed in living quarters only in locations where during the six warmest months of the year the dry bulb temperature is 80 °F or higher for over 650 hours or the wet bulb temperature is 67 °F or higher for over 800 hours.

Air conditioning otherwise permitted by the standards described above, should employ evaporative cooling when engineering studies indicate it is feasible and more economical than refrigeration systems to install and operate.

It is suggested that Departments and agencies initiate a priority system for installing air conditioning in existing personnel living quarters to ensure that the air conditioning of quarters in the warmest areas under these criteria is completed first.

g. Design standards. Agencies should consult the Uniform Building Code or the codes developed by the Council of American Building Officials for guidance in planning construction of permanent family housing that is liveable, durable, safe, sanitary, and not

impose an unreasonable and uneconomical burden upon the Government.

h. Compliance with design standards. Agencies shall plan new construction of family housing in accordance with this circular and nationally recognized design standards, such as those set forth in the Uniform Building Code or the codes developed by the Council of American Building Officials. Budget requests and apportionment requests for this purpose shall be based upon compliance with the approved design standards and the provisions of this circular. The square-foot construction cost should not exceed that generally recognized as prevailing in the area for non-Federal dwellings of similar size and type of occupancy. Exceptions may be made by those agencies constructing housing outside the continental United States where climatic conditions or local building codes and restrictions prevent compliance. Any other exceptions should be plainly set forth in the budget or apportionment request.

i. Budget and apportionment requests. Consult OMB Circular No. A-11, Preparation and Submission of Budget Estimates, subsection 12.5(n), for guidance respecting budget and apportionment requests.

9. Agency Regulations

The following guidelines must also be observed in establishing charges for rental quarters and related facilities and in developing agency regulations and procedures implementing this circular:

a. Conflicts of interest. To avoid potential conflicts of interest, agencies will not assign employee occupants of quarters or their subordinates to perform appraisals or serve as members of regional survey teams used to recommend rents and other charges.

b. Consistent local patterns; Interagency Committees. Where several different Federal agencies provide rental quarters in the same area, those agencies will take necessary steps to ensure a consistent local pattern in rents and utility rates. In particular, such agencies are urged to establish interagency committees to coordinate and oversee the establishment of consistent and uniform rental rates.

c. Agency records regarding recommendations and adjustments. A full record of the findings and recommendations of the appraiser or survey team, as well as documentation to justify administrative adjustments, will be kept by the agency concerned.

d. Agency central records and supervision. Sufficient information will be maintained centrally by the agency to allow agency management to be

informed of, and to monitor, the status of administration of the requirements of this circular.

e. Reconsideration, procedures for. Agencies will provide a procedure for dealing with requests for reconsideration of rental determinations and other charges.

f. Leave status, charges during. Employees on leave will continue to be charged for quarters and related facilities, unless the quarters are vacated and made available for reassignment.

g. Landlord-tenant relationship. To aid all agency administrative officials and employees in understanding how the circular is to be applied, agencies will make clear that they assume the customary responsibilities of the landlord and that those who occupy rental quarters assume the customary responsibilities of tenants.

h. Required occupancy. Agency regulations will specify the conditions under which the agency head, or his or her designee, will require occupancy of Government rental quarters, in accordance with the limitations cited in 5 U.S.C. § 5911(e), which provides that employee or member occupancy of rental quarters may not be required unless the agency head determines that necessary service cannot be rendered, or that property of the Government cannot adequately be protected.

i. Safe and sanitary quarters. Agency heads will ensure that Government rental quarters are safe and sanitary. Although adjustments to the basic rental rate are permitted for such circumstances as excessive heating and cooling costs, poor condition, and lack of potable water, such conditions should not be permitted to continue any longer than absolutely necessary.

j. Agency housing officers. Each Federal agency that provides rental quarters shall appoint a principal housing officer with responsibility to supervise the agency's implementation of the policies of this circular.

10. Inquiries

For information concerning this circular, contact the Office of Management and Budget, Office of Federal Procurement Policy, 725 17th Street, NW., Washington, DC 20503, telephone (202) 395-6803.

Leon E. Panetta,
Director.

Appendix

Isolation Adjustment Computation

The monthly adjustment for isolation, as described in ¶ 7c(1), is computed, as follows:

- Step 1. Determine the one-way distance in miles (from the quarters to the nearest established community) for each affected

category of transportation listed in Figure 1. Enter mileage(s) in the appropriate block(s) under Column B.

- Step 2. Multiply mileage figures entered in Column B by point values listed in

Column A for each affected category of transportation to produce one-way points for each category. Add 29 points to the category 4 subtotal and 27 points to the category 5

subtotal to reflect relative differences in cost or time by use of these modes of travel.

- Step 3. Add all categories of one-way points in Column C to produce total one-way points. (The total must exceed 30 points or there is no adjustment for isolation.)

FIGURE 1

Category of travel	Col. A point value	Col. B one-way miles	Col. C one-way points
(1) Paved road or rail	1.0	x	 =
(2) Unpaved but improved road	1.5	x	 =
(3) Unimproved road	2.0	x	 =
(4) Water, snowmobile, pack animal, foot or other special purpose convey- ance	2.5	x	 =
(5) Air	4.0	x	 =
Total one-way points			 =
• Step 4. Calculate the Isolation Adjustment Factor (IAF) using the following formula: Multiply 2 (to reflect round-trip points) by 4 (to reflect number of trips per month) and then multiply by \$x.xx (GSA's current automobile mileage allowance). For example, the GSA mileage allowance, as of the date of this circular, is \$0.25 per mile, resulting in a IAF of 2.0 (rounded to the nearest tenth).			
Isolation adjustment factor			 = 2.0
• Step 5. Multiply total adjusted points by the Isolation Adjustment Factor to produce the monthly adjustment for isolation (rounded to the nearest whole dollar).			
Monthly adjustment			 =

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Part III

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Program; Final Rules

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Federal Retirement Thrift Investment Board

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Department of Agriculture

22 CFR Part 1701

United States Institute of Peace

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National Council on Disability

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**James Madison Memorial Fellowship
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JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

45 CFR Part 2490

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs

AGENCIES: Federal Retirement Thrift Investment Board; Department of Agriculture; United States Institute of Peace; National Council on Disability; Arctic Research Commission; James Madison Memorial Fellowship Foundation.

ACTION: Final rule.

SUMMARY: This regulation requires that the agencies listed above operate all of their programs and activities to ensure nondiscrimination against qualified individuals with handicaps. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for individual with handicaps and qualified individual with handicaps, and establishes a complaint mechanism for resolving allegations of discrimination. This regulation is issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs or activities conducted by Federal Executive agencies.

EFFECTIVE DATE: November 26, 1993.

ADDRESSES: See individual agencies below. Copies of this regulation will be made available on tape for persons with impaired vision who request them. They will be provided by the Coordination and Review Section, Civil Rights Division, Department of Justice, Washington, DC 20530, (202) 307-2222 (voice) or (202) 307-7678 (TDD).

FOR FURTHER INFORMATION CONTACT:

See individual agencies below.

SUPPLEMENTARY INFORMATION:**Background**

The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the following agencies (hereinafter "the agencies"): Federal Retirement Thrift Investment Board, United States Department of Agriculture, United States Institute of Peace, National Council on Disability, Arctic Research Commission, James Madison Memorial Fellowship Foundation. Section 504 states, in pertinent part, that:

No otherwise qualified individual with handicaps in the United States, * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(29 U.S.C. 794 (1978 amendment italicized).)

On October 25, 1991, the agencies jointly published a Notice of Proposed Rulemaking in the *Federal Register*. 56 FR 55416. That proposed rule was based on the regulations adopted by more than 90 other Federal Executive agencies, including the Department of Justice, for their federally conducted programs and activities, which, in turn, were based on the Department of Justice's prototype for regulations implementing section 504 for federally conducted programs.

Each agency individually received and analyzed comments on the proposed rule. On the basis of their analysis, the agencies decided to adopt this final rule. Because the final rule to be adopted is the same for all of the agencies, the agencies are publishing this final regulation jointly. It will be codified in each agency's portion of the Code of Federal Regulations as indicated in the information provided for individual agencies below.

The substantive nondiscrimination obligations of the agency, as set forth in this rule, are identical, for the most part, to those established by Federal regulations for programs or activities

receiving Federal financial assistance. (See 28 CFR part 41 (section 504 coordination regulation for federally assisted programs).) This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

There are, however, some language differences between this rule and the Federal Government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. See *Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis*, 655 F.2d 1272 (D.C. Cir. 1981) (APTA); see also *Rhode Island Handicapped Action Committee v. Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander v. Choate*, 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable modifications," *id.* at 300, and explicitly noted that "[t]he regulations implementing § 504 [for federally assisted programs] are consistent with the view that reasonable adjustments in the nature of the benefit offered must at times be made to assure meaningful access." *Id.* at 301 n.21 (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal Government's regulations implementing section 504 for federally assisted programs as they have been interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the interpretations of section 504 by the Supreme Court in *Davis*, by lower courts interpreting *Davis*, and by the Supreme Court in *Alexander*; therefore their language does

not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the agencies believe that there are no significant differences between this rule for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

The comments filed on the proposed regulation suggested that the final rule should incorporate requirements from the Department of Justice's regulation implementing title II of the Americans with Disabilities Act (ADA), which extended the requirements of section 504 to all services, programs, and activities of State and local governments. The Department of Justice is planning to issue guidance to the agencies with regulations implementing section 504 for federally assisted and federally conducted programs on how those regulations should be updated in light of the ADA and other recent developments. The agencies participating in this publication intend to cooperate with the Department in making additional changes that will be recommended, but have decided to issue this final regulation without waiting for the additional guidance.

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298). This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared. This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601-612).

Section-by-Section Analysis

Section _____.101 Purpose

Section _____.101 states the purpose of the regulation which is to effectuate section 119 of the Rehabilitation, Comprehensive Service, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive

agencies or the United States Postal Service.

Section _____.102 Application

The regulation applies to all programs or activities conducted by the agencies. Under this section, a federally conducted program or activity is, in simple terms, anything a Federal Agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: those involving general public contact as part of ongoing agency operations and those directly administered by the agencies for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the agency's facilities. Activities in the second category include programs that provide Federal services or benefits.

A commenter objected to the exclusion from coverage of programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States, arguing that the regulation should cover extraterritorial employment to the same extent that it is covered under the Civil Rights Act of 1991. That Act, however, did not amend section 504, which applies only to discrimination against an "otherwise qualified individual in the United States" (emphasis added). Thus, the statute does not permit coverage of discrimination against individuals outside of the United States. The regulation does, however, prohibit actions by the agency outside the United States that result in discrimination against a qualified individual in the United States.

Section _____.103 Definitions

Assistant Attorney General.

"Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids. "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § _____.160(a)(1), they may also be necessary to meet other requirements of the regulation.

Commenters suggested that the list of examples of auxiliary aids be expanded, and that the regulation be revised to make clear that the list is illustrative

and not exhaustive. One commenter recommended adding aids for people with speaking disabilities to the list of examples of auxiliary aids. It is not possible to provide an exhaustive list, because any attempt to do so would omit the new devices that will become available with emerging technology. The agencies believe that the inclusion of the phrase "and other similar services and devices" makes it clear that the definition includes aids and services that are, or may become, available, even though they are not named specifically.

Although the agency has not revised the definition, it agrees with the comment that Federal agencies have special responsibilities to ensure that individuals, including individuals with speech impairments, are able to effectively communicate with their government. Agency employees are required to provide auxiliary aids where necessary to communicate with individuals with speech impairments, but are also required to exercise patience and courtesy in order to understand such individuals when a formal auxiliary aid is not necessary.

The agencies have also declined to adopt the suggestion that the list should include aids for individuals with manual impairments. Auxiliary aids and services are those aids and services designed to provide effective communications, e.g., making aurally and visually delivered information available to persons with hearing, speech, and vision impairments. Methods of making services, programs, or activities accessible to or usable by individuals with mobility or manual dexterity impairments are addressed by other sections of this part, such as the requirements of § _____.150, for program accessibility. For the same reason, the agencies have not adopted the suggestion that a reference to auxiliary aids and services be added to § _____.150.

Complete complaint. "Complete complaint" is defined to include all the information necessary to enable the agency to investigate the complaint. The definition is necessary, because the 180 day period for the agency's investigation (§ _____.170(g)) begins when the agency receives a complete complaint.

Facility. The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs (28 CFR 41.3(f)) except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should,

however, be noted that the regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency.

Historic preservation programs. "Historic properties," and "Substantial impairment." These terms are defined in order to aid in the interpretation of § 150(a)(2) and (b)(2), which relate to accessibility of historic preservation programs.

"Individuals with handicaps." The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in this regulation to be consistent with the statute as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

In response to comments, the agency has added HIV disease (whether symptomatic or asymptomatic) to the list of impairments in the definition of "individual with handicaps."

Qualified individual with handicaps. The definition of "qualified individual with handicaps" is a revised version of the definition of "qualified handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) is an adaptation of existing definitions of "qualified handicapped person" for purposes of federally assisted preschool, elementary, and secondary education programs (see, e.g., 45 CFR 84.3(k)(2)). It provides that an individual with handicaps is qualified for preschool, elementary, or secondary education programs conducted by the agency if he or she is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive these services from the agency. In other words, an individual with handicaps is qualified if, considering all factors other than the handicapping condition, he or she is entitled to receive education services from the agency.

Paragraph (2) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified

individual with handicaps" with regard to any program other than those covered by paragraph (1) under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified individual with handicaps is one who can achieve the purpose of the program without modifications in the program that the agency can demonstrate would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Davis*. In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified individual with handicaps" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

Commenters suggested that the reference to a "fundamental alteration" in the program should not be included in the definition of "qualified

individual with handicaps," but should be moved to a separate "defense" section in order to make clear that the agency has the burden of proving that an individual is not "qualified." This suggestion has not been adopted because the definition makes clear that the agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in § 150(a) and § 160(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the agency head or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the agency head determines that an action would result in a fundamental alteration, the agency must consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.

For programs or activities that do not fall under either of the first two paragraphs, paragraph (3) adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity.

Paragraph (4) explains that "qualified individual with handicaps" means "qualified handicapped person" as that term is defined for purposes of employment in the Equal Employment Opportunity Commission's regulation at 29 CFR 1614.203(a)(6), which is made applicable to this regulation by § 140. Nothing in this regulation changes existing regulations applicable to employment.

Section 504. This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 110 Self-Evaluation

The agency shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The

self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

Section _____.111 Notice

Section _____.111 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section _____.130 General Prohibitions Against Discrimination

Section _____.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § _____.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the agency violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § _____.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of individuals with handicaps. The agency may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (e.g., epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an

irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to automatically disqualify all those who are blind in just one eye.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that afforded to others. The later sections on program accessibility (§ _____.149—_____.151) and communications (§ _____.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified individual with handicaps still has the right to choose to participate in the program that is not designed to accommodate individuals with handicaps.

Paragraph (b)(1)(v) prohibits the agency from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the agency from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the agency from utilizing criteria or methods of

administration that deny individuals with handicaps access to the agency's programs and activities. The phrase "criteria or methods of administration" refers to official written agency policies and to the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § _____.130(b)(3) to the process of selecting sites for construction of new facilities or selecting existing facilities to be used by the agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Paragraph (b)(6) prohibits the agency from discriminating against qualified individuals with handicaps on the basis of handicap in the granting of licenses or certification. A person is a "qualified individual with handicaps" with respect to licensing or certification if he or she can meet the essential eligibility requirements for receiving the license or certification (see § _____.103).

In addition, the agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. For example, the agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case the agency must ensure that standards that it promulgates do not discriminate against the employment of qualified individuals with handicaps in an impermissible manner.

Paragraph (b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Paragraph (d), discussed above, provides that the agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, i.e., in a setting that enables individuals with handicaps to interact with nonhandicapped persons to the fullest extent possible.

Section _____.140 Employment

Section _____.140 prohibits discrimination on the basis of handicap in employment by the agency. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner v. Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith v. United States Postal Service*, 742 F.2d 257, 259-260 (6th Cir. 1984); *Prewitt v. United States Postal Service*, 662 F.2d 292, 302-04 (5th Cir. 1981). *Contra McGuinness v. United States Postal Service*, 744 F.2d 1318, 1320-21 (7th Cir. 1984); *Boyd v. United States Postal Service*, 752 F.2d 410, 413-14 (9th Cir. 1985).

Courts uniformly have held that, in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Morgan v. United States Postal Service*, 798 F.2d 1162, 1164-65 (8th Cir. 1986); *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, § _____.140 (Employment) of this rule adopts the definitions, requirements, and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR part 1614. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap. In addition to this section, § _____.170(b) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination.

Section _____.149 Program Accessibility: Discrimination Prohibited

Section _____.149 states the general nondiscrimination principle

underlying the program accessibility requirements of § _____.150 and _____.151.

Section _____.150 Program Accessibility: Existing Facilities

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § _____.150 requires that each agency program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ _____.150(a)(1)). However, § _____.150, unlike 28 CFR 41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ _____.150(a)(2), (a)(3)).

Paragraph (a)(2), which establishes a special limitation on the obligation to ensure program accessibility in historic preservation programs, is discussed below in connection with paragraph (b).

Paragraph (a)(3) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § _____.160(d). This provision is based on the Supreme Court's holding in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. See, e.g., *Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis*, (APTA), 655 F.2d 1272 (D.C. Cir. 1981).

Paragraphs (a)(3) and _____.160(d) are also supported by the Supreme Court's decision in *Alexander versus Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient

hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on handicapped persons. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on handicapped people, but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation. *Id.* at 299.

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers," *Id.* at 301, and that "reasonable adjustments in the nature of the benefit being offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added). However, section 504 does not require "changes," "adjustments," or "modifications" to existing programs that would be "substantial" * * * or that constitute "fundamental alteration[s] in the nature of a program." *Id.* at n.20 (citations omitted). *Alexander* supports the position, based on *Davis* on the earlier, lower court decisions, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to individuals with handicaps. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § _____.150(a) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with a § _____.150(a) would fundamentally alter the nature of

a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 150.170.

Paragraph (b)(1) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes to the needs of individuals with handicaps. Structural changes in existing facilities are required only when other methods of providing access are not effective. (It should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features, such as removal of or alternation to a load-bearing structural member.) The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraph 150(a)(2) provides an additional limitation on the obligation to ensure program accessibility that is applicable only to historic preservation programs. In order to avoid possible conflict between the congressional mandates to preserve historic properties on the one hand and to eliminate discrimination against individuals with handicaps on the other, § 150(a)(2) provides that in historic preservation programs the agency is not required to take any action that would result in a substantial impairment of significant historic features of an historic property.

Nevertheless, because the primary benefit of an historic preservation program is uniquely the experience of the historic property itself, § 150(b)(2) requires the agency to give priority to methods of providing program accessibility that permit individuals with handicaps to have physical access to the historic property. This priority on physical access may also be viewed as a specific application

of the general requirement that the agency administer programs in the most integrated setting appropriate to the needs of qualified individuals with handicaps (§ 130(d)). Only when providing physical access would result in a substantial impairment of significant historic features, a fundamental alteration in the nature of the program, or in undue financial and administrative burdens, may the agency adopt alternative methods for providing program accessibility that do not ensure physical access. Examples of some alternative methods are provided in § 150(b)(2).

The special limitation on program accessibility set forth in § 150(a)(2) is applicable only to programs that have preservation of historic properties as a primary purpose (see *supra* discussion of definition of "historic preservation program," § 103.103). Narrow application of the special limitation is justified because of the inherent flexibility of the program accessibility requirement. Where historic preservation is not a primary purpose of the program the agency is not bound to a particular facility. It can relocate all or part of its program to an accessible facility, make home visits, or use other standard methods of achieving program accessibility without making structural alterations that might impair significant historic features of the historic property.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section 151 Program Accessibility: New Construction and Alterations

Overlapping coverage exists with respect to new construction and alterations under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157). Section 151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41

CFR 101-19.600 to 101-19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157). Commenters suggested that the final regulation should use the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) as the architectural standard for new construction and alterations. The agency has determined that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in § 150. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § 151.

Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the agency believes the same program accessibility standard should apply to both owned and leased existing buildings.

In *Rose v. United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address the issue of whether section 504 likewise requires accessibility as a condition of lease, and the case was remanded to the District Court for, among other things, consideration of that issue. The agency may provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

Section 160 Communications

Section 160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities,

applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § _____.160(a)(1) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ _____.160(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § _____.160(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (see *supra* preamble discussion of § _____.150(a)(3)). Unless not required by § _____.160(d), the agency shall provide auxiliary aids at no cost to the individual with handicaps.

The discussion of § _____.150(a), Program accessibility: Existing facilities, regarding the determination of undue financial and administrative burdens also applies to this section and should be referred to for a complete understanding of the agency's obligation to comply with § _____.160.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (e.g., a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to inform the public of (1) the communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids must be afforded where

necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ _____.160(a)(1)(ii)). For example, the agency need not provide eyeglasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the agency to provide information to individuals with handicaps concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Section _____.170 Compliance Procedures

Paragraph (a) specifies that paragraphs (c) through (1) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR part 1614) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Paragraph (c) is amended by each individual agency. It designates the official responsible for coordinating implementation of § _____.170 and provides an address to which complaints may be sent.

The agency is required to accept and investigate all complete complaints (§ _____.170(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government (§ _____.170(e)).

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is

found, and notice of the right to appeal (§ _____.170(g)). One appeal within the agency shall be provided (§ _____.170(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance.

Paragraph (1) permits the agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

Adoption of the Common Rule

The agency specific adoptions of the text of the common rule appear below.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1636

FOR FURTHER INFORMATION CONTACT: John J. O'Meara—(202) 942-1662.

List of Subjects in 5 CFR Part 1636

Blind, Buildings and facilities, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Historic places, Historic preservation, Individuals with disabilities.

Title 5, chapter VI of the Code of Federal Regulations is amended as follows:

1. Part 1636 is added as set forth at the end of this document.

PART 1636—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sec.	
1636.101	Purpose.
1636.102	Application.
1636.103	Definitions.
1636.104–1636.109	[Reserved]
1636.110	Self-evaluation.
1636.111	Notice.
1636.112–1636.129	[Reserved]
1636.130	General prohibitions against discrimination.
1636.131–1636.139	[Reserved]
1636.140	Employment.
1636.141–1636.148	[Reserved]
1636.149	Program accessibility: Discrimination prohibited.
1636.150	Program accessibility: Existing facilities
1636.151	Program accessibility: New construction and alterations.
1636.152–1636.159	[Reserved]
1636.160	Communications.
1636.161–1636.169	[Reserved]
1636.170	Compliance procedures.
1636.171–1636.999	[Reserved]
Authority: 29 U.S.C. 794.	

2. Part 1636 is further amended by revising paragraph (c) in § 1636.170 to read as follows:

§ 1636.170 Compliance procedures.

(c) The Assistant General Counsel (Administration) shall be responsible for coordinating implementation of this section. Complaints may be sent to the Executive Director.

Francis X. Cavanaugh,
Executive Director.

DEPARTMENT OF AGRICULTURE

7 CFR Part 15e

FOR FURTHER INFORMATION CONTACT:
Judith A. Demont, Equal Opportunity Specialist, Complaints and Adjudication Division, Office of Advocacy and Enterprise, U.S. Department of Agriculture, Washington, DC 20250 (202) 720-4200. TDD available at (202) 720-7327.

List of Subjects in 7 CFR Part 15e

Blind, Buildings and facilities, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Historic places, Historic preservation, Individuals with disabilities.

Title 7, subtitle A of the Code of Federal Regulations is amended as follows:

1. Part 15e is added as set forth at the end of this document.

PART 15e—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE

Sec.

- 15e.101 Purpose.
- 15e.102 Application.
- 15e.103 Definitions.
- 15e.104–15e.109 [Reserved]
- 15e.110 Self-evaluation.
- 15e.111 Notice.
- 15e.112–15e.129 [Reserved]
- 15e.130 General prohibitions against discrimination.
- 15e.131–15e.139 [Reserved]
- 15e.140 Employment.
- 15e.141–15e.148 [Reserved]
- 15e.149 Program accessibility: Discrimination prohibited.
- 15e.150 Program accessibility: Existing facilities.
- 15e.151 Program accessibility: New construction and alterations.
- 15e.152–15e.159 [Reserved]
- 15e.160 Communications.
- 15e.161–15e.169 [Reserved]
- 15e.170 Compliance procedures.
- 15e.171–15e.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 15e is further amended by revising paragraph (c) in § 15e.170 to read as follows:

§ 15e.170 Compliance procedures.

(c) The Director, Office of Advocacy and Enterprise, shall be responsible for coordinating implementation of this section and shall make the determinations described in paragraph (g) of this section. Complaints may be sent to Office of Advocacy and Enterprise, U.S. Department of Agriculture, Washington, DC 20250.

Mike Espy,
Secretary of Agriculture.

UNITED STATES INSTITUTE OF PEACE

22 CFR Part 1701

FOR FURTHER INFORMATION CONTACT: Ms. Bernice Carney, United States Institute of Peace, 1550 M Street, NW., Washington, DC 20005-1708 (202) 457-1700 (Voice) (202) 457-1719 (TDD).

ADDITIONAL SUPPLEMENTARY INFORMATION:
This regulation, which implements the spirit of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, defines the scope of the USIP's obligation to insure that, to the extent practicable, handicapped individuals are provided with equal access to USIP programs and activities.

This regulation implements the spirit of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs and activities conducted by various agencies. Although the USIP does not believe that Congress contemplated coverage of independent Federal institutions such as the USIP, it has voluntarily chosen to promulgate this regulation pursuant to section 504.

List of Subjects in 22 CFR Part 1701

Blind, Buildings and facilities, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Historic places, Historic preservation, Individuals with disabilities.

Title 22 of the Code of Federal Regulations is amended as follows:

1. Chapter XVII, consisting of part 1701 is added to Title 22 of the Code of Federal Regulations to read as follows:

CHAPTER XVII—UNITED STATES INSTITUTE OF PEACE

Part 1701—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the United States Institute of Peace

2. Part 1701 is added as set forth at the end of this document.

2. PART 1701—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE UNITED STATES INSTITUTE OF PEACE

Sec.

- 1701.101 Purpose.
- 1701.102 Application.
- 1701.103 Definitions.
- 1701.104–1701.109 [Reserved]
- 1701.110 Self-evaluation.
- 1701.111 Notice.
- 1701.112–1701.129 [Reserved]
- 1701.130 General prohibitions against discrimination.
- 1701.131–1701.139 [Reserved]
- 1701.140 Employment.
- 1701.141–1701.148 [Reserved]
- 1701.149 Program accessibility: Discrimination prohibited.
- 1701.150 Program accessibility: Existing facilities.
- 1701.151 Program accessibility: New construction and alterations.
- 1701.152–1701.159 [Reserved]
- 1701.160 Communications.
- 1701.161–1701.169 [Reserved]
- 1701.170 Compliance procedures.
- 1701.171–1701.999 [Reserved]

Authority: 29 U.S.C. 794.

3. Part 1701 is further amended by revising § 1701.101 to read as follows:

§ 1701.101 Purpose.

The purpose of this part is to implement the spirit of section 119 of the Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by various Executive agencies. Although the USIP does not believe that Congress contemplated coverage of independent Federal institutions, such as the USIP, it has chosen to promulgate this part.

4. Part 1701 is further amended by revising paragraph (c) in § 1701.170 to read as follows:

§ 1701.170 Compliance procedures.

(c) The Director for Administration, United States Institute of Peace, shall be responsible for coordinating implementation of this section. Complaints may be sent to Director of Administration at the following address:

1550 M Street, NW., suite 700,
Washington, DC 20005.

Charles Duryea Smith,
General Counsel.

NATIONAL COUNCIL ON DISABILITY **34 CFR Part 1200**

FOR FURTHER INFORMATION CONTACT:
Janice Mack, National Council on
Disability, (202) 267-3846.

List of Subjects in 34 CFR Part 1200

Blind, Buildings and facilities, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Historic places, Historic preservation, Individuals with disabilities.

Title 34 of the Code of Federal Regulations is amended as follows:

1. Subtitle C, chapter XII, consisting of part 1200, is added to title 34 of the Code of Federal Regulations to read as follows:

Subtitle C—Regulations Relating to Education

CHAPTER XII—NATIONAL COUNCIL ON DISABILITY

Part 1200—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the National Council on Disability

2. Part 1200 is added as set forth at the end of this document.

PART 1200—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL COUNCIL ON DISABILITY

Sec.	
1200.101	Purpose.
1200.102	Application.
1200.103	Definitions.
1200.104–1200.109	[Reserved]
1200.110	Self-evaluation.
1200.111	Notice.
1200.112–1200.129	[Reserved]
1200.130	General prohibitions against discrimination.
1200.131–1200.139	[Reserved]
1200.140	Employment.
1200.141–1200.148	[Reserved]
1200.149	Program accessibility: Discrimination prohibited.
1200.150	Program accessibility: Existing facilities.
1200.151	Program accessibility: New construction and alterations.
1200.152–1200.159	[Reserved]
1200.160	Communications.
1200.161–1200.169	[Reserved]
1200.170	Compliance procedures.
1200.171–1200.999	[Reserved]

Authority: 29 U.S.C. 794.

3. Part 1200 is further amended by revising paragraph (c) in § 1200.170 to read as follows:

§ 1200.170 Compliance procedures.

(c) The Executive Director shall be responsible for coordinating implementation of this section. Complaints may be sent to the National Council on Disability, 800 Independence Avenue, SW., suite 814, Washington, DC 20591.

Edward P. Burke,
Acting Executive Director.

ARCTIC RESEARCH COMMISSION

45 CFR Part 2301

FOR FURTHER INFORMATION CONTACT: Dr. Philip L. Johnson, Executive Director, Arctic Research Commission, ICC Building, room 6333, 12th & Constitution Avenue, NW., Washington DC 20423. Voice (202) 371-9631. TDD (202) 357-9867.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Arctic Research Commission is responsible for conducting public meetings annually; at least one of these must be held in Alaska pursuant to the Arctic Research and Policy Act. 15 U.S.C. 4102. When determining where such meeting will be held, the Commission must consider the public, industries and government agencies from which opinions are sought, and the extent to which delay or expense can be minimized. In order to maximize participation by arctic residents, some meetings are held in rural Alaska.

Meetings held in the Commission's offices shall be accessible in accordance with this regulation. As to meetings held outside of the Commission's offices, the Commission will attempt to locate accessible facilities that conform to the requirements of this regulation. In such instances the Commission will include in this notice of the meeting a request that persons desiring to attend should inform the Commission in advance of any accessibility features they may require. If the Commission receives a request in advance for an accessible meeting site in response to this notice, the Commission will arrange access or move the meeting to an accessible meeting site even though this accessible site may be farther from the population that the Commission needs to reach, so long as such move would not exceed the "undue burdens" and "fundamental alterations" limitations set forth at § 2301.150(a)(3). Thus, the Commission will, subject only to the limitations of § 2301.150(a)(3), ensure access for any individual with

handicaps who gives reasonable advance notice.

The notice regarding all Commission meetings, including both meetings held in and outside of the Commission's offices, will also ask individuals with handicaps to inform the Commission in advance of any auxiliary aids, such as sign language interpreters, that may be necessary. In such instances also, the Commission will, subject only to the limitations of § 2301.160(d), ensure that any individual with handicaps who provides the Commission with reasonable advance notice that he or she needs auxiliary aids in order to participate is provided with such auxiliary aids.

List of Subjects in 45 CFR Part 2301

Blind, Buildings and facilities, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Historic places, Historic preservation, Individuals with disabilities.

Title 45 of the Code of Federal Regulations is amended as follows:

1. Chapter XXIII, consisting of part 2301, is added to title 45 of the Code of Federal Regulations to read as follows:

CHAPTER XXIII—ARCTIC RESEARCH COMMISSION

Part 2301—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the United States Arctic Research Commission

2. Part 2301 is added as set forth at the end of this document.

PART 2301—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE UNITED STATES ARCTIC RESEARCH COMMISSION

Sec.	
2301.101	Purpose.
2301.102	Application.
2301.103	Definitions.
2301.104–2301.109	[Reserved]
2301.110	Self-evaluation.
2301.111	Notice.
2301.112–2301.129	[Reserved]
2301.130	General prohibitions against discrimination.
2301.131–2301.139	[Reserved]
2301.140	Employment.
2301.141–2301.148	[Reserved]
2301.149	Program accessibility: Discrimination prohibited.
2301.150	Program accessibility: Existing facilities.
2301.151	Program accessibility: New construction and alterations.
2301.152–2301.159	[Reserved]
2301.160	Communications.
2301.161–2301.169	[Reserved]
2301.170	Compliance procedures.

Sec.

2301.171-2301.999 [Reserved]

Authority: 29 U.S.C. 794.

3. Part 2301 is further amended by revising paragraph (c) in § 2301.170 to read as follows:

§ 2301.170 Compliance procedures.

* * * * *

(c) The Executive Director shall be responsible for coordinating implementation of this section. Complaints may be sent to Executive Director, United States Arctic Research Commission, ICC Building, room 6333, 12th and Constitution Avenue, NW., Washington, DC 20423.

* * * * *

Philip Johnson,
Executive Director.

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

45 CFR Part 2490

FOR FURTHER INFORMATION CONTACT: Mr. Gary S. Foy (202) 653-8700.

List of Subjects in 45 CFR Part 2490

Blind, Buildings and facilities, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Historic places, Historic preservation, Individuals with disabilities.

Title 45, chapter XXIV of the Code of Federal Regulations is amended as follows:

1. Part 2490 is added as set forth at the end of this document.

**PART 2490—ENFORCEMENT OF
NONDISCRIMINATION ON THE BASIS
OF HANDICAP IN PROGRAMS OR
ACTIVITIES CONDUCTED BY THE
JAMES MADISON MEMORIAL
FELLOWSHIP FOUNDATION**

Sec.

2490.101 Purpose.

2490.102 Application.

2490.103 Definitions.

2490.104-2490.109 [Reserved]

2490.110 Self-evaluation.

2490.111 Notice.

2490.112-2490.129 [Reserved]

2490.130 General prohibitions against discrimination.

2490.131-2490.139 [Reserved]

2490.140 Employment.

2490.141-2490.148 [Reserved]

2490.149 Program accessibility: Discrimination prohibited.

2490.150 Program accessibility: Existing facilities.

2490.151 Program accessibility: New construction and alterations.

2490.152-2490.159 [Reserved]

2490.160 Communications.

2490.161-2490.169 [Reserved]

2490.170 Compliance procedures.

Sec.

2490.171-2490.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 2490 is further amended by revising paragraph (c) in § 2490.170 to read as follows:

§ 2490.170 Compliance procedures.

* * * * *

(c) The Director of Administration and Finance shall be responsible for coordinating implementation of this section. Complaints may be sent to James Madison Memorial Fellowship Foundation, 2000 K Street, NW., suite 303, Washington, DC 20006.

* * * * *

Paul A. Yost, Jr.,
Admiral, USCG (Ret.), President.

Text of Common Rule

The text of the common rule, as adopted by the agencies in this document, appears below.

**PART —ENFORCEMENT OF
NONDISCRIMINATION ON THE BASIS
OF HANDICAP IN PROGRAMS OR
ACTIVITIES CONDUCTED BY**

Sec.

_____101 Purpose.

_____102 Application.

_____103 Definitions.

_____104-_____109 [Reserved]

_____110 Self-evaluation.

_____111 Notice.

_____112-_____129 [Reserved]

_____130 General prohibitions against discrimination.

_____131-_____139 [Reserved]

_____140 Employment.

_____141-_____148 [Reserved]

_____149 Program accessibility: Discrimination prohibited.

_____150 Program accessibility: Existing facilities.

_____151 Program accessibility: New construction and alterations.

_____152-_____159 [Reserved]

_____160 Communications.

_____161-_____169 [Reserved]

_____170 Compliance procedures.

_____171-_____999 [Reserved]

Authority: 29 U.S.C. 794.

_____101 Purpose

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

_____102 Application

This part (§ _____101-_____170) applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

_____103 Definitions

For purposes of this part, the term—
Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TTD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a

record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, HIV disease (whether symptomatic or asymptomatic), and drug addiction and alcoholism.

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

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

(4) *Is regarded as having an impairment* means—

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

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

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Qualified individual with handicaps means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency;

(2) With respect to any other agency program or activity under which a

person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1614.203(a)(6), which is made applicable to this part by § _____.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended. As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

_____.104-_____.109 [Reserved]

_____.110 *Self-evaluation*

(a) The agency shall, by November 28, 1994, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

_____.111 *Notice*

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or

activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

_____.112-_____.129 [Reserved]

_____.130 *General Prohibitions Against Discrimination*

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in according equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;

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

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are no separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods

of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

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

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

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

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

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

_____.131-_____.139 [Reserved]

_____.140 Employment

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29

U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1614, shall apply to employment in federally conducted programs or activities.

_____.141-_____.148 [Reserved]

_____.149 Program Accessibility: Discrimination Prohibited

Except as otherwise provided in § _____.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

_____.150 Program Accessibility: Existing Facilities

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § _____.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.*—(1) *General.* The agency may comply with the requirements of

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

(2) *Historic preservation programs.* In meeting the requirements of § _____.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of § _____.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by January 24, 1994, except that where structural changes in facilities are undertaken, such changes shall be made by November 26, 1996, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by May 26, 1994, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or

organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

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

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

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

.151 Program Accessibility: New Construction and Alterations

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

.152–.159 [Reserved]

.160 Communications

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

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems

shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § _____.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

.161–.169 [Reserved]

.170 Compliance Procedures

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The head of the agency shall designate an official to be responsible

for coordinating implementation of this section.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § _____.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

.171–.999 [Reserved]

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