

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	

Send comments to The Honorable Tim Parnell, Mayor of the Town of Parkton, P.O. Box 55, Parkton, North Carolina 28371.

**Town of Proctorville**

Maps available for inspection at the Proctorville Town Hall, Corner of Carolina & Main Street, Proctorville, North Carolina.

Send comments to The Honorable Hal D. Ivey, Mayor of the Town of Proctorville, P.O. Box 190, Proctorville, North Carolina 28375.

**Town of Red Springs**

Maps available for inspection at the Red Springs Town Hall, 217 South Main Street, Red Springs, North Carolina.

Send comments to The Honorable George T. Paris, Mayor of the Town of Red Springs, 217 South Main Street, Red Springs, North Carolina 28377.

**Robeson County (Unincorporated Areas)**

Maps available for inspection at the Robeson County Inspections & Zoning Office, 415 Country Club Drive, Lumberton, North Carolina.

Send comments to Mr. Kenneth Windley, Jr., Robeson County Manager, County Administration Building, 701 North Elm Street, Lumberton, North Carolina 28358.

**Town of Rowland**

Maps available for inspection at the Rowland Town Hall, 202 West Main Street, Rowland, North Carolina.

Send comments to The Honorable Harris McCall, Mayor of the Town of Rowland, P.O. Box 127, Rowland, North Carolina 28383.

**NORTH CAROLINA  
Town of St. James, Brunswick County**

Atlantic Ocean .....	Approximately 500 feet north of the intersection of Glenscare Lane SE and Pinecrest Drive SE.	None	•11	Town of St. James
	Approximately 1,000 feet south of the intersection of Marshwood Court and Marshpoint Road.	•13	•11	

**Town of St. James**

Maps available for inspection at the St. James Town Hall, 3628 St. James Drive, Southport, North Carolina.

Send comments to The Honorable Leonard B. Harmon, Mayor of the Town of St. James, 3628 St. James Drive, Southport, North Carolina 28461.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 3, 2004.

**Anthony S. Lowe,**

*Mitigation Division Director, Emergency Preparedness and Response Directorate.*

[FR Doc. 04-5245 Filed 3-8-04; 8:45 am]

BILLING CODE 9110-12-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**45 CFR Parts 74, 92, 96, and 87**

**Participation in Department of Health and Human Services Programs by Religious Organizations; Providing for Equal Treatment of all Department of Health and Human Services Program Participants**

**AGENCY:** Office of the Secretary, Department of Health and Human Services.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed rule is intended to implement executive branch policy that, within the framework of

constitutional church-state guidelines, religiously affiliated (or "faith-based") organizations should be able to compete on an equal footing with other organizations for the Department's funding without impairing the religious character of such organizations. It proposes to revise Department regulations at 45 CFR Parts 74, 92, and 96 to remove barriers to the participation of faith-based organizations in Department programs and to ensure that these programs are implemented in a manner consistent with applicable statutes and the requirements of the Constitution, including the Establishment, Free Exercise, and Free Speech Clauses of the First Amendment.

**DATES:** Comments must be submitted by May 10, 2004.

**ADDRESSES:** You may submit comments by any of the following methods. All submissions must include the agency name and Regulation Identifier Number (RIN) for this rulemaking:

- *Mail:* HHS/OS Executive Secretariat, Room 603-H, 200 Independence Avenue, SW., Washington, DC 20201.

- *Hand delivery/courier:* HHS/OS Executive Secretariat, Room 603-H, 200 Independence Avenue, SW., Washington, DC 20201. Delivery must be made between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Federal Rulemaking Portal:* At Regulations.gov located at <http://www.regulations.gov/index.cfm>.

*Instructions:* At Regulations.gov you may find, review, and submit comments on this and other proposed regulations open for comment and published in the **Federal Register**. Once you have performed a search and located the open proposed regulation, you may submit comments by clicking the "Submit a Comment on this Regulation" link. The link will open a blank comment form in a separate Internet browser window for you to fill out. The form is limited to 4,000 characters or roughly two pages of comments. You may send more than one comment form. In most cases, you may also attach an electronic file as a part of your comment. The comment form that appears when you click the "Submit a Comment on this Regulation" link is specific to the particular Department or Agency that will receive

the comment. The comment form includes instructions on how to submit the comment and what information must be provided for the comment to be considered. Comments must include the full name, postal address, and organizational or agency affiliation (if applicable) of the sender. The completed comment form will include a unique document identification number and a date and time stamp applied automatically by the Regulations.gov Web site. Comments submitted via the Regulations.gov are transmitted from the Regulations.gov Web site to the Department and assigned the Docket Identification Number for the action you are commenting on. All public comments received are then reviewed by the Department and taken into account when the final regulation is developed.

**FOR FURTHER INFORMATION CONTACT:** For information, contact Bobby J. Polito, Director, Center for Faith-Based and Community Initiatives, Department of Health and Human Services, Room 120F, 200 Independence Avenue, SW., Washington, DC 20201; telephone: (202) 358-3595 (this is not a toll-free number). Hearing or speech-impaired individuals may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

This proposed rule is part of the Department's effort to fulfill its responsibilities under two Executive Orders issued by President Bush. The first of these Orders, Executive Order 13198 of January 29, 2001, published in the **Federal Register** on January 31, 2001 (66 FR 8497), created Centers for Faith-Based and Community Initiatives in five cabinet departments—Housing and Urban Development, Health and Human Services, Education, Labor, and Justice—and directed these Centers to identify and eliminate regulatory, contracting, and other programmatic obstacles to the equal participation of faith-based and community organizations in the provision of social services by their Departments. The second of these Executive Orders, Executive Order 13279 of December 12, 2002, published in the **Federal Register** on December 16, 2002 (67 FR 77141), charged executive branch agencies to give equal treatment to faith-based and community groups that apply for funds to meet social needs in America's communities. President Bush thereby called for an end to discrimination against faith-based organizations and

ordered implementation of these policies throughout the executive branch in a manner consistent with the First Amendment to the United States Constitution. He further directed that faith-based organizations be allowed to retain their religious autonomy over their internal governance and composition of boards, and over their display of religious art, icons, scriptures, or other religious symbols, when participating in government-funded programs. The Administration believes that there should be an equal opportunity for all organizations—both religious and nonreligious—to participate as partners in Federal programs.

**II. This Proposed Rule**

This rule proposes to amend the Department's uniform administrative requirements at 45 CFR Parts 74, 92, and 96 and is applicable only to those grants, agreements, and other financial assistance covered by such requirements.

The objective of the proposed rule is to ensure that the Department's discretionary grants, formula and block grants, and other financial assistance are open to all qualified organizations, regardless of their religious character or affiliation, and to establish clearly the proper uses to which funds could be put and the conditions for receipt of funding. In addition, this proposed rule is designed to ensure that the implementation of the Department's programs is conducted in a manner consistent with the requirements of Federal law and the Constitution, including the Establishment, Free Exercise, and Free Speech Clauses of the First Amendment. The proposed rule has the following specific objectives:

1. *Participation by faith-based organizations in Department of Health and Human Services programs.* The proposed rule provides that organizations are eligible to participate in Department programs without regard to their religious character or affiliation, and that organizations not be excluded from the competition for Department funds simply because they are religious. Specifically, religious organizations are eligible to compete for funding on the same basis, and under the same eligibility requirements, as other organizations. The Department, as well as state and local governments administering funds under Department programs or intermediate organizations with the same duties as a governmental entity under this part, are prohibited from discriminating for or against organizations on the basis of religious character or affiliation in the selection

of service providers. Nothing in the rule, however, would preclude those administering Department-funded programs from accommodating religious organizations in a manner consistent with the Establishment Clause.

2. *Inherently religious activities.* The proposed rule describes the requirements that would be applicable to all recipient organizations regarding the use of Department funds for inherently religious activities. Specifically, a participating organization may not use direct financial assistance from the Department to support inherently religious activities, such as worship, religious instruction, or proselytization. If the organization engages in such activities, it would be required to offer them separately, in time or location, from the programs or services funded with direct Department assistance, and participation must be voluntary, and understood to be voluntary, for the beneficiaries of the Department-funded programs or services. This requirement ensures that direct financial assistance from the Department to religious organizations is not used to support inherently religious activities. Such assistance may not be used, for example, to conduct worship services, prayer meetings, or any other activity that is inherently religious.

The proposed rule clarifies that this restriction does not mean that an organization that receives Department funds may not engage in inherently religious activities, but only that such an organization may not fund these activities with direct financial assistance from the Department. It further provides that the restrictions on inherently religious activities do not apply where Department funds are provided to religious organizations as a result of a genuine and independent private choice of a beneficiary (e.g., under a program that gives a beneficiary a Department-funded voucher, coupon, certificate, or another funding mechanism designed to give that beneficiary a choice among providers) or through other indirect funding mechanisms, provided the religious organizations otherwise satisfy the requirements of the program.

In this proposed rule, the term "direct financial assistance" means that the government or an intermediate organization with the same duties as a governmental entity under this part selects the provider and purchases the needed services straight from the provider (e.g., via a contract or cooperative agreement). In contrast, indirect funding scenarios typically place the choice of service provider in the hands of the beneficiary, and then

pay for the cost of that service through a voucher, certificate, or other similar means of payment.

3. *Independence of faith-based organizations.* The proposed rule also clarifies that a religious organization that participates in Department programs retains its independence and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from the Department to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, a faith-based organization could use space in its facilities to provide Department-funded services without removing religious art, icons, scriptures, or other religious symbols. In addition, a Department-funded religious organization may retain religious terms in its organization's name, select its board members and otherwise govern itself on a religious basis, and include religious references in its organization's mission statements and other governing documents.

4. *Employment practices.* The proposed rule also clarifies that religious organizations do not forfeit their exemption from the Federal prohibition of employment discrimination on the basis of religion set forth in section 702 (a) of the Civil Rights Act of 1964. Some Department programs, however, have independent statutory nondiscrimination requirements related to employment discrimination. Therefore, organizations should consult with the appropriate grant program office.

5. *Nondiscrimination in providing assistance.* The proposed rule provides that an organization that receives direct financial assistance from the Department may not, in providing program assistance supported by such funding, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

6. *Assurance requirements.* All organizations that participate in Department programs, including organizations with religious character or affiliations are required to carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of Department-funded activities, including those prohibiting the use of direct financial assistance from the Department to engage in inherently religious activities. The Department will not require only religious organizations to provide

assurances that they will not use monies or property for inherently religious activities. Any restrictions on the use of financial assistance shall apply equally to religious and non-religious organizations. Thus, the Department intends to create a "level playing field."

### III. Findings and Certifications

#### *Executive Order 12866*

Executive Order 12866 (as amended by Executive Order 13258) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any one year). Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This rule is considered a "significant regulatory action" under section 3 (f) of the Executive Order, and therefore has been reviewed by the Office of Management and Budget.

#### *Regulatory Flexibility Analysis*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), must review and approve this proposed rule and certify that this rule will not have a significant economic impact on a substantial number of small entities. The proposed rule would not impose any new costs, or modify existing costs, applicable to Department grantees. Rather, the purpose of the proposed rule is to remove policy prohibitions that currently restrict the equal participation of religious or religiously affiliated organizations in the Department's programs. Notwithstanding the Department's determination that this rule will not have a significant economic effect on a substantial number of small entities, the Department specifically invites comments regarding any less burdensome alternatives to this rule that will meet the Department's objectives as described in this preamble.

#### *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by

state, local, or tribal governments, in the aggregate, or by the private sector, of \$110 million or more. This proposed rule would not mandate any requirements for state, local, or tribal governments, nor would it result in expenditures by the private sector of \$110 million or more in any one year.

#### *Executive Order 13132—Federalism*

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. Consistent with Executive Order 13132, the Department specifically solicits comments from state and local government officials on this proposed rule.

#### **List of Subjects**

##### *45 CFR Part 74*

Administrative Practice and Procedures, Grants.

##### *45 CFR Part 92*

Administrative Practice and Procedures, Grants.

##### *45 CFR Part 96*

Administrative Practice and Procedures, Block Grants.

##### *45 CFR Part 87*

Administrative Practice and Procedures, Grant Programs-social programs, public assistance programs, nonprofit organizations.

For the reasons stated in the preamble, the Department proposes to amend chapter I of Title 45 of the Code of Federal Regulations as follows:

### **PART 74—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR AWARDS AND SUBAWARDS TO INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NONPROFIT ORGANIZATIONS, AND COMMERCIAL ORGANIZATIONS; AND CERTAIN GRANTS AND AGREEMENTS WITH STATES, LOCAL GOVERNMENTS AND INDIAN TRIBAL GOVERNMENTS**

1. The authority citation for part 74 continues to read as follows:

**Authority:** 5 U.S.C. 301

2. In subpart B add § 74.18 to read as follows:

**§ 74.18 Participation by faith-based organizations.**

The funds provided under this part shall be administered in compliance with the standards set forth in part 87 (Equal Treatment for Faith-based Organizations) of this chapter.

3. In § 74.17, add paragraph (a) and add and reserve (b) to read as follows:

**§ 74.17 Certifications and representations.**

\* \* \* \* \*

(a) The funds provided under this part shall be administered in compliance with the standards set forth in part 87 (Equal Treatment for Faith-based Organizations) of this chapter.

(b) [Reserved]

**PART 92—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

4. The authority for part 92 continues to read as follows:

**Authority:** 5 U.S.C. 301.

5. In subpart B add § 92.13 and 92.14 to read as follows:

**§ 92.13 Participation by faith-based organizations.**

The funds provided under this part shall be administered in compliance with the standards set forth in part 87 (Equal Treatment for Faith-based Organizations) of this chapter.

**§ 92.14 Compliance With Part 87**

The funds provided under this part shall be administered in compliance with the standards set forth in part 87 (Equal Treatment for Faith-based Organizations) of this chapter.

**PART 96—BLOCK GRANTS**

6. The authority citation for part 96 is revised to read as follows:

**Authority:** 31 U.S.C. 1243 note, 7501–7507; 42 U.S.C. 300w *et seq.*; 300x *et seq.*, 300y *et seq.*, 701 *et seq.*, 8621 *et seq.*, 9901 *et seq.*, 1397 *et seq.*; 5 U.S.C. 301/

7. In subpart B add § 96.18 to read as follows:

**§ 96.18 Participation by faith-based organizations.**

The funds provided under this part shall be administered in compliance with the standards set forth in part 87 (Equal Treatment for Faith-based Organizations) of this chapter.

8. Add Part 87 to read as follows:

**PART 87—EQUAL TREATMENT FOR FAITH-BASED ORGANIZATIONS**

Sec.

87.1 Discretionary grants

87.2 Formula and block grants

**Authority:** 5 U.S.C. 301.

**§ 87.1 Discretionary grants.**

(a) Religious organizations are eligible, on the same basis as any other organization, to participate in any Department program for which they are otherwise eligible. Neither the Department nor any state or local government and other intermediate organizations receiving funds under any Department program shall, in the selection of service providers, discriminate for or against an organization on the basis of the organization's religious character or affiliation. As used in this section, "program" refers to activities supported by discretionary grants under which recipients are selected through a competitive process. As used in this section, the term "recipient" means an organization receiving financial assistance from an HHS awarding agency to carry out a project or program and includes the term "grantee" as used in 45 CFR Parts 74, 92, and 96.

(b) Organizations that receive direct financial assistance from the Department under any Department program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance from the Department. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the Department, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance.

(c) A religious organization that participates in the Department-funded programs or services will retain its independence from federal, state, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from the Department to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, a faith-based organization may use space in its facilities to provide programs or services funded with financial assistance from the Department without removing religious art, icons, scriptures, or other religious symbols. In addition, a religious organization that receives financial assistance from the Department retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a

religious basis, and include religious references in its organization's mission statements and other governing documents in accordance with all program requirements and other applicable requirements governing the conduct of Department-funded activities.

(d) An organization that participates in programs funded by direct financial assistance from the Department shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(e) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department or a state or local government in administering financial assistance from the Department shall require only religious organizations to provide assurances that they will not use monies or property for inherently religious activities. Any restrictions on the use of grant funds shall apply equally to religious and non-religious organizations. All organizations that participate in Department programs, including organizations with religious character or affiliations, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of Department-funded activities, including those prohibiting the use of direct financial assistance from the Department to engage in inherently religious activities. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department or a state or local government in administering financial assistance from the Department shall disqualify religious organizations from participating in the Department's programs because such organizations are motivated or influenced by religious faith to provide social services, or because of their religious character or affiliation.

(f) A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1, is not forfeited when the organization receives direct or indirect financial assistance from the Department. Some Department programs, however, contain independent statutory provisions requiring that all recipients agree not to discriminate in employment on the basis of religion. Accordingly, recipients should consult with the appropriate Department program office if they have

questions about the scope of any applicable requirement.

(g) In general, the Department does not require that a recipient, including a religious organization, obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code to be eligible for funding under Department programs. Many grant programs, however, do require an organization to be a "nonprofit organization" in order to be eligible for funding. Funding announcements and other grant application solicitations that require organizations to have nonprofit status will specifically so indicate in the eligibility section of the solicitation. In addition, any solicitation that requires an organization to maintain tax-exempt status will expressly state the statutory authority for requiring such status. Recipients should consult with the appropriate Department program office to determine the scope of any applicable requirements. In Department programs in which an applicant must show that it is a nonprofit organization, the applicant may do so by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a state or other governmental taxing body or the state secretary of state certifying that:

(i) The organization is a nonprofit organization operating within the state; and

(ii) No part of its net earnings may benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (g)(1) through (3) of this section if that item applies to a state or national parent organization, together with a statement by the state or parent organization that the applicant is a local nonprofit affiliate.

(h) If a state or local government contributes its own funds, including but not limited to matching funds, to supplement activities carried out under the applicable programs, the state or local government has the option to separate out the Federal funds or commingle them. If the funds are commingled, the provisions of this section shall apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

(i) To the extent otherwise permitted by Federal law, the restrictions on inherently religious activities set forth in this section do not apply where Department funds are provided to religious organizations as a result of a genuine and independent private choice of a beneficiary or through other indirect funding mechanisms, provided the religious organizations otherwise satisfy the requirements of the program. A religious organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, or certificate, allowing the beneficiary to direct where funds are to be paid, or through a similar funding mechanism provided to that beneficiary and designed to give that beneficiary a genuine and independent choice among providers.

#### **§ 87.2 Formula and block grants.**

(a) Religious organizations are eligible, on the same basis as any other organization, to participate in any Department program for which they are otherwise eligible. Neither the Department nor any state or local government receiving funds under any Department program nor any intermediate organization with the same duties as a governmental entity under this part shall, in the selection of service providers, discriminate for or against an organization on the basis of the organization's religious character or affiliation. As used in this section, "program" refers to activities supported by formula or block grants. As used in this section, the term "recipient" means an organization receiving financial assistance from an HHS awarding agency to carry out a project or program and includes the term 'grantee' as used in 45 CFR Parts 74, 92, and 96.

(b) Organizations that receive direct financial assistance from the Department may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance from the Department. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the Department, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance.

(c) A religious organization that participates in the Department-funded programs or services will retain its independence from federal, state, and local governments, and may continue to

carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from the Department to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, a faith-based organization that receives financial assistance from the Department may use space in its facilities, without removing religious art, icons, scriptures, or other religious symbols. In addition, a religious organization that receives financial assistance from the Department retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents in accordance with all program requirements and other applicable requirements governing the conduct of Department-funded activities.

(d) An organization that participates in programs funded by direct financial assistance from the Department shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(e) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department or a state or local government in administering financial assistance from the Department shall require only religious organizations to provide assurances that they will not use monies or property for inherently religious activities. Any restrictions on the use of grant funds shall apply equally to religious and non-religious organizations. All organizations that participate in Department programs, including organizations with religious character or affiliations, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of Department-funded activities, including those prohibiting the use of direct financial assistance to engage in inherently religious activities. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department or a state or local government in administering financial assistance from the Department shall disqualify religious organizations from participating in the Department's programs because such organizations are motivated or influenced by religious faith to provide

social services, or because of their religious character or affiliation.

(f) A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1, is not forfeited when the religious organization receives direct or indirect financial assistance from Department. Some Department programs, however, contain independent statutory provisions requiring that all recipients agree not to discriminate in employment on the basis of religion. Accordingly, grantees should consult with the appropriate Department program office if they have questions about the scope of any applicable requirement.

(g) In general, the Department does not require that a recipient, including a religious organization, obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code to be eligible for funding under Department programs. Many grant programs, however, do require an organization to be a "nonprofit organization" in order to be eligible for funding. Individual solicitations that require organizations to have nonprofit status will specifically so indicate in the eligibility section of a solicitation. In addition, any solicitation that requires an organization to maintain tax-exempt status will expressly state the statutory authority for requiring such status. Grantees should consult with the appropriate Department program office to determine the scope of any applicable requirements. In Department programs in which an applicant must show that it is a nonprofit organization, the applicant may do so by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a state or other governmental taxing body or the state secretary of state certifying that:

(i) The organization is a nonprofit organization operating within the state; and

(ii) No part of its net earnings may benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (g)(1) through (3) of this section if that item applies to a state or national parent organization, together with a statement

by the state or parent organization that the applicant is a local nonprofit affiliate.

(h) If a state or local government contributes its own funds, including but not limited to matching funds, to supplement activities carried out under the applicable programs, the state or local government has the option to separate out the Federal funds or commingle them. If the funds are commingled, the provisions of this section shall apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

(i) To the extent otherwise permitted by Federal law, the restrictions on inherently religious activities set forth in this section do not apply where Department funds are provided to religious organizations as a result of a genuine and independent private choice of a beneficiary or through other indirect funding mechanisms, provided the religious organizations otherwise satisfy the requirements of the program. A religious organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, or certificate, allowing the beneficiary to direct where funds are to be paid, or through a similar funding mechanism provided to that beneficiary and designed to give that beneficiary a choice among providers.

Dated: March 1, 2004.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 04-5110 Filed 3-4-04; 8:58 am]

**BILLING CODE 4154-07-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

**RIN 1018-AT61**

#### Endangered and Threatened Wildlife and Plants; Regulations for Nonessential Experimental Populations of the Western Distinct Population Segment of the Gray Wolf

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service) propose regulations for the nonessential experimental populations of the western distinct population segment (DPS) of the gray wolf (*Canis lupus*). In addition, we

propose regulations so that States with wolf management plans approved by the Service can apply for additional authorities to manage wolves consistent with those approved plans. These proposed regulations would only have effect in States that have an approved State management plan for gray wolves. Within the western DPS of the gray wolf, only the States of Idaho and Montana have approved State management plans for gray wolves; the State of Wyoming has prepared a wolf management plan which was not approved by the Service; therefore, if finalized, these regulatory changes would not affect existing wolf management in Wyoming. As we discussed in our advance notice of proposed rulemaking regarding delisting the western DPS of the gray wolf, once all the States have approved wolf management plans, we intend to propose removing the western DPS from the List of Endangered and Threatened Vertebrates. This proposed rule would also not affect the eastern DPS or the southwestern DPS of the gray wolf.

**DATES:** Comments on this proposed rule must be received by May 10, 2004. Public hearings will be scheduled for Boise, ID, and Helena, MT, during the comment period (see "Public Hearings" in the **SUPPLEMENTARY INFORMATION** section). Requests for additional public hearings must be received by April 8, 2004.

**ADDRESSES:** U.S. Fish and Wildlife Service, Western Gray Wolf Recovery Coordinator, 100 N. Park, #320, Helena, MT 59601. Comments on this proposed rule may be sent to this address, or by electronic mail to [WesternGrayWolf@fws.gov](mailto:WesternGrayWolf@fws.gov). If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: RIN 1018-AT61" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Helena office at telephone number 406-449-5225.

**FOR FURTHER INFORMATION CONTACT:** Ed Bangs, Western Gray Wolf Recovery Coordinator, at telephone number 406-449-5225, ext. 204.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On April 1, 2003, we published in the **Federal Register** (69 FR 15879) an advance notice of proposed rulemaking that announced our intention to propose rulemaking under the Endangered