

within 100 yards of a large cruise ship that is underway, moored, position-keeping, or at anchor, unless authorized by the Captain of the Port or his or her designated representatives.

(2) When conditions permit, the Captain of the Port, or his or her designated representatives, may permit vessels that are at anchor, restricted in their ability to maneuver, or constrained by draft to remain within an LCS security zone in order to ensure navigational safety.

(3) Persons desiring to transit the areas of the security zones in this section may contact the Captain of the Port at Command Center telephone number (808) 842-2600 or on VHF channel 16 (156.8 Mhz) to seek permission to transit the area. Written requests may be submitted to the Captain of Port, U.S. Coast Guard Sector Honolulu, Sand Island Access Road, Honolulu, Hawaii 96819, or faxed to (808) 842-2622. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representatives. For all seaplane traffic entering or transiting the security zones, compliance with all Federal Aviation Administration regulations regarding flight-plan approval is deemed adequate permission to transit the waterway security zones described in this section.

(d) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce the rules in this section.

(e) *Waiver.* The Captain of the Port, Honolulu may waive any of the requirements of this section for any vessel or class of vessels upon his or her determination that application of this section is unnecessary or impractical for the purpose of port and maritime security.

(f) *Penalties.* Vessels or persons violating this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

5. Add § 165.1410 to read as follows:

**§ 165.1410 Security Zones; Kauai, HI.**

(a) *Location.* The following areas, from the surface of the water to the ocean floor, are security zones that are activated and enforced subject to the provisions in paragraph (c) of this section:

(1) *Nawiliwili Harbor, Lihue, Kauai.* All waters extending 100 yards in all directions from each large cruise ship in Nawiliwili Harbor, Kauai, HI or within 3 nautical miles seaward of the Nawiliwili Harbor COLREGS DEMARCATION (See 33 CFR 80.1450).

This is a moving security zone when the LCS is in transit and becomes a fixed zone when the LCS is anchored, position-keeping, or moored.

(2) *Port Allen, Kauai.* All waters extending 100 yards in all directions from each large cruise ship in Port Allen, Kauai, HI or within 3 nautical miles seaward of the Port Allen COLREGS DEMARCATION (See 33 CFR 80.1440). This is a moving security zone when the LCS is in transit and becomes a fixed zone when the LCS is anchored, position-keeping, or moored.

(b) *Definitions.* As used in this section, *Large cruise ship* or *LCS* means a passenger vessel over 300 feet in length that carries passengers for hire.

(c) *Regulations.* (1) Under 33 CFR 165.33, entry into the security zones created by this section is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his or her designated representatives. When authorized passage through an LCS security zone, all vessels must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or his or her designated representatives. No person is allowed within 100 yards of a large cruise ship that is underway, moored, position-keeping, or at anchor, unless authorized by the Captain of the Port or his or her designated representatives.

(2) When conditions permit, the Captain of the Port, or his or her designated representatives, may permit vessels that are at anchor, restricted in their ability to maneuver, or constrained by draft to remain within an LCS security zone in order to ensure navigational safety.

(3) Persons desiring to transit the areas of the security zones may contact the Captain of the Port at Command Center telephone number (808) 842-2600 or on VHF channel 16 (156.8 Mhz) to seek permission to transit the area. Written requests may be submitted to the Captain of Port, U.S. Coast Guard Sector Honolulu, Sand Island Access Road, Honolulu, Hawaii 96819, or faxed to (808) 842-2622. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representatives. For all seaplane traffic entering or transiting the security zones, compliance with all Federal Aviation Administration regulations regarding flight-plan approval is deemed adequate permission to transit the waterway security zones described in this section.

(d) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port

representative permitted by law, may enforce the rules in this section.

(e) *Waiver.* The Captain of the Port, Honolulu may waive any of the requirements of this section for any vessel or class of vessels upon his or her determination that application of this section is unnecessary or impractical for the purpose of port and maritime security.

(f) *Penalties.* Vessels or persons violating this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: May 23, 2005.

**C.D. Wurster,**

*Rear Admiral, U.S. Coast Guard, Commander, Fourteenth Coast Guard District.*

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Resources and Services Administration**

**42 CFR Part 50**

**RIN 0906-AA69**

**Simplification of the Grant Appeals Process**

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Pursuant to 42 CFR part 50, subpart D, the Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS), has provided an informal level of appeal on those grant related disputes subject to the departmental appeal procedures codified at 45 CFR Part 16. HHS is proposing to amend 42 CFR part 50, subpart D, to remove HRSA from the list of agencies to which these informal appeal procedures apply. This would permit aggrieved HRSA grantees direct access to the Departmental Grant Appeals Board and that Board's original jurisdiction.

**DATES:** Written comments must be received on or before August 8, 2005.

**ADDRESSES:** You may submit comments, identified by RIN number 0906-AA69, by any of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

2. Submit written comments by mail to the attention of Gail Lipton, Director, Division of Grants Policy, Room 11A-55, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857.

3. E-mail: [glipton@hrsa.gov](mailto:glipton@hrsa.gov).

4. FAX: 301-443-5461.

**FOR FURTHER INFORMATION CONTACT:** Gail Lipton, 301-443-6509.

**SUPPLEMENTARY INFORMATION:** When HHS first established its Departmental Grant Appeals Board (now the Departmental Appeals Board), there was no provision for the Department's subordinate agencies to first review the disputed actions of officials prior to appeal at the Departmental level. However, it quickly became apparent that a number of disputes could, and would, be resolved quickly by informal means if the grantees' complaints were surfaced to management levels within the HHS subordinate agencies. As a result, the regulations at 45 CFR part 16 were revised to permit subordinate agencies to interpose an "informal" level of appeal prior to submission of an appeal to the Departmental Appeals Board. Various agencies in the Public Health Service (which has since been reorganized) chose to institute an intermediate informal review process as is currently described in 42 CFR part 50, subpart D. The intermediate level of appeal provided these agencies with an opportunity to relatively quickly and economically reverse erroneous decisions, or to reassure grantees that a decision adverse to them was indeed an "agency" decision. At the time these regulations were instituted, this informal process was of significant benefit to both grantees and the subordinate agencies. Based on the lessons learned from this process and other means, HRSA instituted a policy of reviewing carefully the adverse determinations of their employees prior to permitting them to be issued so as to avoid erroneous determinations which would be subject to reversal upon appeal at the informal level. HRSA believes that it has reached the point where the adverse determinations being issued in recent years generally represent the Agency's best judgment.

HHS therefore believes that, for HRSA and its grantees, this information process is no longer of benefit, and the cost in time and expense to the grantee is no longer warranted. Consequently, HHS is proposing to amend 42 CFR part 50, subpart D, to remove HRSA from the list of agencies to which the regulations apply. As a result, under this proposal, grantees wishing to appeal HRSA's eligible adverse determinations would be entitled to appeal such determinations directly to the Departmental Appeals Board.

#### **Executive Order 12866**

Executive Order (EO) 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits. We have determined that the rule is not a significant regulatory action under Section 3(f) of the EO and does not require an assessment of the potential costs and benefits under section 6(a)(3) of that EO. Under the EO, the Office of Management and Budget (OMB) has exempted it from review. This regulation was reviewed by OMB.

#### **Regulatory Flexibility**

The Regulatory Flexibility Act (5 U.S.C. Chapter 6) requires that regulatory actions be analyzed to determine whether they will have a significant impact on a substantial number of small entities. We have determined that this is not a "major" role under this Act and therefore does not require a regulatory flexibility analysis. The elimination of the informal appeals process will represent a cost savings for aggrieved HRSA grantees regardless of whether the organizations are large or small entities, as the affected grantees will now have direct access to the Departmental Appeals Board to petition for reconsideration of adverse findings rather than first presenting their cases to an informally constituted HRSA review committee. As a result, aggrieved grantees will only incur costs related to the preparation and presentation of their petitions to the Departmental Appeals Board, and not the costs which might be incurred for preparation and submission to both an ad-hoc committee and the Departmental Appeals Board.

#### **Unfunded Mandates**

The Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by States, local or tribal governments, or by the private sector of \$100 million or more in any given year. This rule does not have cost implications for the economy of \$100 million or more, nor otherwise meet the criteria for a major rule under Executive Order 12291, and therefore does not require a regulation impact analysis.

#### **Executive Order 13132**

Executive Order 13132 requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. In the event

that this rule may have such implications, we solicit comment from State and local government officials.

#### **Executive Order 13175**

Executive Order 13175 requires the Department to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." Although it is not clear that the proposed rule will have tribal implications, we solicit comment on this proposed rule from tribal officials.

#### **Paperwork Reduction Act**

There are no new paperwork requirements subject to OMB approval under the Paperwork Reduction Act of 1995.

#### **List of Subjects in 42 CFR Part 50**

Administrative practice and procedure, Grant programs—health, Health care.

**Elizabeth M. Duke,**

*Administrator, Health Resources and Services Administration.*

Approved: May 27, 2005.

**Michael O. Leavitt,**

*Secretary of Health and Human Services.*

For the reasons set forth in the preamble, the Department proposes to amend subpart D of part 50 of Title 42 of the Code of Federal Regulations as follows:

#### **PART 50—[AMENDED]**

##### **Subpart D—Public Health Service Grant Appeals Procedure**

1. The authority citation for Part 50, Subpart D, continues to read as follows:

**Authority:** Sec. 215, Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); 45 CFR 16.3(c).

2. Section 50.402 is revised to read as follows:

##### **§ 50.402 To what programs do these regulations apply?**

This subpart applies to all grant and cooperative agreement programs, except block grants, which are administered by the National Institutes of Health. The Centers for Disease Control and Prevention, the Agency for Toxic Substances and Disease Registry; the Food and Drug Administration; and the Office of the Assistant Secretary for Public Health and Sciences. For purposes of this regulation, these entities are hereinafter referred to as "agencies."

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