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***Appendix C: Citations from the Workforce  
Investment Act, the Carl D. Perkins  
Career and Technical Education  
Improvement Act, and the Code of  
Federal Regulations***

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## ***Appendix C: Citations from the Workforce Investment Act, the Carl D. Perkins Career and Technical Education Improvement Act, and the Code of Federal Regulations***

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This appendix provides the specific text from the Workforce Investment Act of 1998 (Pub. L. 105-220) and the Carl D. Perkins Career and Technical Education Improvement Act of 2006, section 118 (Pub. L. 109-270), which contain provisions related to the Occupational Information Network (O\*NET) Data Collection Program, and sections of the *Code of Federal Regulations*, which cite either O\*NET, the *Dictionary of Occupational Titles* (DOT, the predecessor to O\*NET), or occupational information. The C.F.R. citations were identified through electronic search of the *Code of Federal Regulations* on the Internet site of the U.S. Government Printing Office (<http://www.gpoaccess.gov/cfr/index.html>). Given the length of the documents obtained through this search, only the specific sections containing the O\*NET or DOT references are included. Exhibit C-1 lists the specific citations, the regulatory entity, and the topic of the regulation.

**Exhibit C-1. Code of Federal Regulation Passages That Reference the O\*NET Data Collection Program, the *Dictionary of Occupational Titles*, or Occupational Information**

<b>Regulatory Entity</b>	<b>C.F.R. Title and Part/Section</b>	<b>Topic</b>
Railroad Retirement Board	20 C.F.R. pt. 220	Determining Disability
	20 C.F.R. § 220.13	Establishment of permanent disability for work in regular railroad occupation
	20 C.F.R. § 220.131	Work which exists in the national economy
	20 C.F.R. § 220.132	Physical exertion requirements
	20 C.F.R. § 220.134	Medical—vocational guidelines in appendix 2 of this report
	20 C.F.R. § 220.135	Exertional and non-exertional limitations
	20 C.F.R. app. 2 § 200.00	Medical Vocational Guidelines—Introduction
Social Security Administration	20 C.F.R. pt. 404(P)	Determining Disability and Blindness
	20 C.F.R. § 404.1560	When we will consider your vocational background
	20 C.F.R. § 404.1566	Work which exists in the national economy
	20 C.F.R. § 404.1567	Physical exertion requirements
	20 C.F.R. § 404.1569	Listing of medical-vocational guidelines
	20 C.F.R. § 404.1569a	Exertional and non-exertional limitations
Social Security Administration	20 C.F.R. pt. 404(P) app. 2 § 200.00	Introduction
Social Security Administration	20 C.F.R. pt. 416(I)	Supplemental Security Income for Aged, Blind, and Disabled
	20 C.F.R. § 416.960	When we will consider your vocational background
	20 C.F.R. § 416.966	Work which exists in the national economy
	20 C.F.R. § 416.967	Physical exertion requirements
	20 C.F.R. § 416.969	Listing of medical-vocational guidelines
Department of Labor	20 C.F.R. § 627.40	Job Training Partnership Act—On-the-job training
	20 C.F.R. § 651.10	General Provisions Governing the Federal-State Employment Service, Definition of terms used in parts 651–658
	20 C.F.R. § 653.103	Migrant and Seasonal Farm Worker Job Applications
	20 C.F.R. § 655.730	What is the process for filing a labor condition application?
	20 C.F.R. § 655.940	Employer attestations
Department of Labor, Wage and Hour Division	29 C.F.R. pt. 553	Application of Fair Labor Standards Act to Employees of State and Local Government
	29 C.F.R. § 553.30	Occasional or sporadic employment—Section 7(p)(2)
	29 C.F.R. § 553.103	“Same type of services” defined
Equal Employment Opportunity Commission	29 C.F.R. § 1607.15	Documentation of impact and validity evidence
Department of Education, Office of Post-Secondary Education	34 C.F.R. § 600.2	Institutional Eligibility under the Higher Education Act of 1965 as amended, Definition of “recognized occupation” for which institution provides training
Department of Veterans’ Affairs	38 C.F.R. § 21.382	Training and staff development for personnel providing assistance under Chapter 31

(A) regarding the provision of services by such member (or by an entity that such member represents); or

(B) that would provide direct financial benefit to such member or the immediate family of such member; or

(2) engage in any other activity determined by the Governor to constitute a conflict of interest as specified in the State plan.

(g) **SUNSHINE PROVISION.**—The State board shall make available to the public, on a regular basis through open meetings, information regarding the activities of the State board, including information regarding the State plan prior to submission of the plan, information regarding membership, and, on request, minutes of formal meetings of the State board.

29 USC 2822.

**SEC. 112. STATE PLAN.**

(a) **IN GENERAL.**—For a State to be eligible to receive an allotment under section 127 or 132, or to receive financial assistance under the Wagner-Peyser Act (29 U.S.C. 49 et seq.), the Governor of the State shall submit to the Secretary for consideration by the Secretary, a single State plan (referred to in this title as the “State plan”) that outlines a 5-year strategy for the statewide workforce investment system of the State and that meets the requirements of section 111 and this section.

(b) **CONTENTS.**—The State plan shall include—

(1) a description of the State board, including a description of the manner in which such board collaborated in the development of the State plan and a description of how the board will continue to collaborate in carrying out the functions described in section 111(d);

(2) a description of State-imposed requirements for the statewide workforce investment system;

(3) a description of the State performance accountability system developed for the workforce investment activities to be carried out through the statewide workforce investment system, that includes information identifying State performance measures as described in section 136(b)(3)(A)(ii);

(4) information describing—

(A) the needs of the State with regard to current and projected employment opportunities, by occupation;

(B) the job skills necessary to obtain such employment opportunities;

(C) the skills and economic development needs of the State; and

(D) the type and availability of workforce investment activities in the State;

(5) an identification of local areas designated in the State, including a description of the process used for the designation of such areas;

(6) an identification of criteria to be used by chief elected officials for the appointment of members of local boards based on the requirements of section 117;

(7) the detailed plans required under section 8 of the Wagner-Peyser Act (29 U.S.C. 49g);

(8)(A) a description of the procedures that will be taken by the State to assure coordination of and avoid duplication among—

(C) shall provide access to the activities carried out under subsection (e), if any;

(D) shall provide access to programs and activities carried out by one-stop partners and described in section 121(b); and

(E) shall provide access to the information described in section 15 of the Wagner-Peyser Act and all job search, placement, recruitment, and other labor exchange services authorized under the Wagner-Peyser Act (29 U.S.C. 49 et seq.).

(2) **ONE-STOP DELIVERY.**—At a minimum, the one-stop delivery system—

(A) shall make each of the programs, services, and activities described in paragraph (1) accessible at not less than one physical center in each local area of the State; and

(B) may also make programs, services, and activities described in paragraph (1) available—

(i) through a network of affiliated sites that can provide one or more of the programs, services, and activities to individuals; and

(ii) through a network of eligible one-stop partners—

(I) in which each partner provides one or more of the programs, services, and activities to such individuals and is accessible at an affiliated site that consists of a physical location or an electronically or technologically linked access point; and

(II) that assures individuals that information on the availability of the core services will be available regardless of where the individuals initially enter the statewide workforce investment system, including information made available through an access point described in subclause (I).

(3) **SPECIALIZED CENTERS.**—The centers and sites described in paragraph (2) may have a specialization in addressing special needs, such as the needs of dislocated workers.

(d) **REQUIRED LOCAL EMPLOYMENT AND TRAINING ACTIVITIES.**—

(1) **IN GENERAL.**—

(A) **ALLOCATED FUNDS.**—Funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 133(b), and funds allocated to the local area for dislocated workers under section 133(b)(2)(B), shall be used—

(i) to establish a one-stop delivery system described in subsection (c);

(ii) to provide the core services described in paragraph (2) to adults and dislocated workers, respectively, through the one-stop delivery system in accordance with such paragraph;

(iii) to provide the intensive services described in paragraph (3) to adults and dislocated workers, respectively, described in such paragraph; and

(iv) to provide training services described in paragraph (4) to adults and dislocated workers, respectively, described in such paragraph.

(B) **OTHER FUNDS.**—A portion of the funds made available under Federal law authorizing the programs and activities described in section 121(b)(1)(B), including the Wagner-Peyser Act (29 U.S.C. 49 et seq.), shall be used as described in clauses (i) and (ii) of subparagraph (A), to the extent not inconsistent with the Federal law involved.

(2) **CORE SERVICES.**—Funds described in paragraph (1)(A) shall be used to provide core services, which shall be available to individuals who are adults or dislocated workers through the one-stop delivery system and shall, at a minimum, include—

(A) determinations of whether the individuals are eligible to receive assistance under this subtitle;

(B) outreach, intake (which may include worker profiling), and orientation to the information and other services available through the one-stop delivery system;

(C) initial assessment of skill levels, aptitudes, abilities, and supportive service needs;

(D) job search and placement assistance, and where appropriate, career counseling;

(E) provision of employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including—

(i) job vacancy listings in such labor market areas;

(ii) information on job skills necessary to obtain the jobs described in clause (i); and

(iii) information relating to local occupations in demand and the earnings and skill requirements for such occupations; and

(F) provision of performance information and program cost information on eligible providers of training services as described in section 122, provided by program, and eligible providers of youth activities described in section 123, providers of adult education described in title II, providers of postsecondary vocational education activities and vocational education activities available to school drop-outs under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.), and providers of vocational rehabilitation program activities described in title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.);

(G) provision of information regarding how the local area is performing on the local performance measures and any additional performance information with respect to the one-stop delivery system in the local area;

(H) provision of accurate information relating to the availability of supportive services, including child care and transportation, available in the local area, and referral to such services, as appropriate;

(I) provision of information regarding filing claims for unemployment compensation;

(J) assistance in establishing eligibility for—

(i) welfare-to-work activities authorized under section 403(a)(5) of the Social Security Act (as added by section 5001 of the Balanced Budget Act of 1997) available in the local area; and

(3) ASSISTANCE.—The Secretary shall make the services of staff available to the representatives to assist the representatives in participating in the collaboration described in paragraph (1) and in the activities described in section 502.

29 USC 2872.

**SEC. 137. AUTHORIZATION OF APPROPRIATIONS.**

(a) YOUTH ACTIVITIES.—There are authorized to be appropriated to carry out the activities described in section 127(a), such sums as may be necessary for each of fiscal years 1999 through 2003.

(b) ADULT EMPLOYMENT AND TRAINING ACTIVITIES.—There are authorized to be appropriated to carry out the activities described in section 132(a)(1), such sums as may be necessary for each of fiscal years 1999 through 2003.

(c) DISLOCATED WORKER EMPLOYMENT AND TRAINING ACTIVITIES.—There are authorized to be appropriated to carry out the activities described in section 132(a)(2), such sums as may be necessary for each of fiscal years 1999 through 2003.

## Subtitle C—Job Corps

29 USC 2881.

**SEC. 141. PURPOSES.**

The purposes of this subtitle are—

(1) to maintain a national Job Corps program, carried out in partnership with States and communities, to assist eligible youth who need and can benefit from an intensive program, operated in a group setting in residential and nonresidential centers, to become more responsible, employable, and productive citizens;

(2) to set forth standards and procedures for selecting individuals as enrollees in the Job Corps;

(3) to authorize the establishment of Job Corps centers in which enrollees will participate in intensive programs of activities described in this subtitle; and

(4) to prescribe various other powers, duties, and responsibilities incident to the operation and continuing development of the Job Corps.

29 USC 2882.

**SEC. 142. DEFINITIONS.**

In this subtitle:

(1) APPLICABLE LOCAL BOARD.—The term “applicable local board” means a local board—

(A) that provides information for a Job Corps center on local employment opportunities and the job skills needed to obtain the opportunities; and

(B) that serves communities in which the graduates of the Job Corps center seek employment.

(2) APPLICABLE ONE-STOP CENTER.—The term “applicable one-stop center” means a one-stop customer service center that provides services, such as referral, intake, recruitment, and placement, to a Job Corps center.

(3) ENROLLEE.—The term “enrollee” means an individual who has voluntarily applied for, been selected for, and enrolled in the Job Corps program, and remains with the program, but has not yet become a graduate.

(4) FORMER ENROLLEE.—The term “former enrollee” means an individual who has voluntarily applied for, been selected for, and enrolled in the Job Corps program, but left the program



**SEC. 154. INDUSTRY COUNCILS.**

29 USC 2894.

(a) **IN GENERAL.**—Each Job Corps center shall have an industry council, appointed by the director of the center after consultation with the Liaison, in accordance with procedures established by the Secretary.

(b) **INDUSTRY COUNCIL COMPOSITION.**—

(1) **IN GENERAL.**—An industry council shall be comprised of—

(A) a majority of members who shall be local and distant owners of business concerns, chief executives or chief operating officers of nongovernmental employers, or other private sector employers, who—

(i) have substantial management, hiring, or policy responsibility; and

(ii) represent businesses with employment opportunities that reflect the employment opportunities of the applicable local area;

(B) representatives of labor organizations (where present) and representatives of employees; and

(C) enrollees and graduates of the Job Corps.

(2) **LOCAL BOARD.**—The industry council may include members of the applicable local boards who meet the requirements described in paragraph (1).

(c) **RESPONSIBILITIES.**—The responsibilities of the industry council shall be—

(1) to work closely with all applicable local boards in order to determine, and recommend to the Secretary, appropriate vocational training for the center;

(2) to review all the relevant labor market information to—

(A) determine the employment opportunities in the local areas in which the enrollees intend to seek employment after graduation;

(B) determine the skills and education that are necessary to obtain the employment opportunities; and

(C) recommend to the Secretary the type of vocational training that should be implemented at the center to enable the enrollees to obtain the employment opportunities; and

(3) to meet at least once every 6 months to reevaluate the labor market information, and other relevant information, to determine, and recommend to the Secretary, any necessary changes in the vocational training provided at the center.

(d) **NEW CENTERS.**—The industry council for a Job Corps center that is not yet operating shall carry out the responsibilities described in subsection (c) at least 3 months prior to the date on which the center accepts the first enrollee at the center.

**SEC. 155. ADVISORY COMMITTEES.**

29 USC 2895.

The Secretary may establish and use advisory committees in connection with the operation of the Job Corps program, and the operation of Job Corps centers, whenever the Secretary determines that the availability of outside advice and counsel on a regular basis would be of substantial benefit in identifying and overcoming problems, in planning program or center development, or in strengthening relationships between the Job Corps and agencies, institutions, or groups engaged in related activities.

of Health and Human Services the purpose of which is determined by the Interagency Group to be related to the purpose of the Institute.

(2) OFFICES.—The Institute shall have offices separate from the offices of the Department of Education, the Department of Labor, and the Department of Health and Human Services.

(3) RECOMMENDATIONS.—The Interagency Group shall consider the recommendations of the National Institute for Literacy Advisory Board (in this section referred to as the “Board”) established under subsection (e) in planning the goals of the Institute and in the implementation of any programs to achieve the goals. If the Board’s recommendations are not followed, the Interagency Group shall provide a written explanation to the Board concerning actions the Interagency Group takes that are inconsistent with the Board’s recommendations, including the reasons for not following the Board’s recommendations with respect to the actions. The Board may also request a meeting of the Interagency Group to discuss the Board’s recommendations.

(4) DAILY OPERATIONS.—The daily operations of the Institute shall be administered by the Director of the Institute.

(c) DUTIES.—

(1) IN GENERAL.—In order to provide leadership for the improvement and expansion of the system for delivery of literacy services, the Institute is authorized—

(A) to establish a national electronic data base of information that disseminates information to the broadest possible audience within the literacy and basic skills field, and that includes—

(i) effective practices in the provision of literacy and basic skills instruction, including instruction in phonemic awareness, systematic phonics, fluency, and reading comprehension, and the integration of literacy and basic skills instruction with occupational skills training;

(ii) public and private literacy and basic skills programs, and Federal, State, and local policies, affecting the provision of literacy services at the national, State, and local levels;

(iii) opportunities for technical assistance, meetings, conferences, and other opportunities that lead to the improvement of literacy and basic skills services; and

(iv) a communication network for literacy programs, providers, social service agencies, and students;

(B) to coordinate support for the provision of literacy and basic skills services across Federal agencies and at the State and local levels;

(C) to coordinate the support of reliable and replicable research and development on literacy and basic skills in families and adults across Federal agencies, especially with the Office of Educational Research and Improvement in the Department of Education, and to carry out basic and applied research and development on topics that are not being investigated by other organizations or agencies, such as the special literacy needs of individuals with learning disabilities;

(5) by redesignating subsection (e) as subsection (d); and  
 (6) in subsection (d) (as redesignated in paragraph (5)),  
 by striking “such plans” and inserting “such detailed plans”.

**SEC. 307. REPEAL OF FEDERAL ADVISORY COUNCIL.**

Section 11 of the Wagner-Peyser Act (29 U.S.C. 49j) is amended—

- (1) by striking “11.” and all that follows through “(b) In” and inserting “11. In”; and
- (2) by striking “Director” and inserting “Secretary”.

**SEC. 308. REGULATIONS.**

Section 12 of the Wagner-Peyser Act (29 U.S.C. 49k) is amended by striking “The Director, with the approval of the Secretary of Labor,” and inserting “The Secretary”.

**SEC. 309. EMPLOYMENT STATISTICS.**

The Wagner-Peyser Act is amended—

- (1) by redesignating section 15 (29 U.S.C. 49 note) as section 16; and
- (2) by inserting after section 14 (29 U.S.C. 49l-1) the following:

29 USC 49l-2.

**“SEC. 15. EMPLOYMENT STATISTICS.**

“(a) **SYSTEM CONTENT.**—

“(1) **IN GENERAL.**—The Secretary, in accordance with the provisions of this section, shall oversee the development, maintenance, and continuous improvement of a nationwide employment statistics system of employment statistics that includes—

“(A) statistical data from cooperative statistical survey and projection programs and data from administrative reporting systems that, taken together, enumerate, estimate, and project employment opportunities and conditions at national, State, and local levels in a timely manner, including statistics on—

“(i) employment and unemployment status of national, State, and local populations, including self-employed, part-time, and seasonal workers;

“(ii) industrial distribution of occupations, as well as current and projected employment opportunities, wages, benefits (where data is available), and skill trends by occupation and industry, with particular attention paid to State and local conditions;

“(iii) the incidence of, industrial and geographical location of, and number of workers displaced by, permanent layoffs and plant closings; and

“(iv) employment and earnings information maintained in a longitudinal manner to be used for research and program evaluation;

“(B) information on State and local employment opportunities, and other appropriate statistical data related to labor market dynamics, which—

“(i) shall be current and comprehensive;

“(ii) shall meet the needs identified through the consultations described in subparagraphs (A) and (B) of subsection (e)(2); and

“(iii) shall meet the needs for the information identified in section 134(d);

“(C) technical standards (which the Secretary shall publish annually) for data and information described in subparagraphs (A) and (B) that, at a minimum, meet the criteria of chapter 35 of title 44, United States Code;

“(D) procedures to ensure compatibility and additivity of the data and information described in subparagraphs (A) and (B) from national, State, and local levels;

“(E) procedures to support standardization and aggregation of data from administrative reporting systems described in subparagraph (A) of employment-related programs;

“(F) analysis of data and information described in subparagraphs (A) and (B) for uses such as—

“(i) national, State, and local policymaking;

“(ii) implementation of Federal policies (including allocation formulas);

“(iii) program planning and evaluation; and

“(iv) researching labor market dynamics;

“(G) wide dissemination of such data, information, and analysis in a user-friendly manner and voluntary technical standards for dissemination mechanisms; and

“(H) programs of—

“(i) training for effective data dissemination;

“(ii) research and demonstration; and

“(iii) programs and technical assistance.

“(2) INFORMATION TO BE CONFIDENTIAL.—

“(A) IN GENERAL.—No officer or employee of the Federal Government or agent of the Federal Government may—

“(i) use any submission that is furnished for exclusively statistical purposes under the provisions of this section for any purpose other than the statistical purposes of this section for which the submission is furnished;

“(ii) make any publication or media transmittal of the data contained in the submission described in clause (i) that permits information concerning individual subjects to be reasonably inferred by either direct or indirect means; or

“(iii) permit anyone other than a sworn officer, employee, or agent of any Federal department or agency, or a contractor (including an employee of a contractor) of such department or agency, to examine an individual submission described in clause (i);

without the consent of the individual, agency, or other person who is the subject of the submission or provides that submission.

“(B) IMMUNITY FROM LEGAL PROCESS.—Any submission (including any data derived from the submission) that is collected and retained by a Federal department or agency, or an officer, employee, agent, or contractor of such a department or agency, for exclusively statistical purposes under this section shall be immune from the legal process and shall not, without the consent of the individual, agency, or other person who is the subject of the submission or provides that submission, be admitted as evidence or used

“(A) consult with State and local employers, participants, and local workforce investment boards about the labor market relevance of the data to be collected and disseminated through the statewide employment statistics system;

“(B) consult with State educational agencies and local educational agencies concerning the provision of employment statistics in order to meet the needs of secondary school and postsecondary school students who seek such information;

“(C) collect and disseminate for the system, on behalf of the State and localities in the State, the information and data described in subparagraphs (A) and (B) of subsection (a)(1);

“(D) maintain and continuously improve the statewide employment statistics system in accordance with this section;

“(E) perform contract and grant responsibilities for data collection, analysis, and dissemination for such system;

“(F) conduct such other data collection, analysis, and dissemination activities as will ensure an effective statewide employment statistics system;

“(G) actively seek the participation of other State and local agencies in data collection, analysis, and dissemination activities in order to ensure complementary, compatibility, and usefulness of data;

“(H) participate in the development of the annual plan described in subsection (c); and

“(I) utilize the quarterly records described in section 136(f)(2) of the Workforce Investment Act of 1998 to assist the State and other States in measuring State progress on State performance measures.

“(3) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed as limiting the ability of a State agency to conduct additional data collection, analysis, and dissemination activities with State funds or with Federal funds from sources other than this section.

“(f) **NONDUPLICATION REQUIREMENT.**—None of the functions and activities carried out pursuant to this section shall duplicate the functions and activities carried out under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.).

“(g) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 1999 through 2004.

“(h) **DEFINITION.**—In this section, the term ‘local area’ means the smallest geographical area for which data can be produced with statistical reliability.”.

#### **SEC. 310. TECHNICAL AMENDMENTS.**

Sections 3(b), 6(b)(1), and 7(d) of the Wagner-Peyser Act (29 U.S.C. 49b(b), 49e(b)(1), and 49f(d)) are amended by striking “Secretary of Labor” and inserting “Secretary”.

#### **SEC. 311. EFFECTIVE DATE.**

The amendments made by this subtitle shall take effect on July 1, 1999.



PUBLIC LAW 109–270—AUG. 12, 2006 120 STAT. 683

Public Law 109–270

109th Congress

An Act

To amend the Carl D. Perkins Vocational and Technical Education Act of 1998 to improve the Act.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; AMENDMENT.**

(a) **SHORT TITLE.**—This Act may be cited as the “Carl D. Perkins Career and Technical Education Improvement Act of 2006”.

(b) **AMENDMENT.**—The Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2301 et seq.) is amended to read as follows:

**“SEC. 118. OCCUPATIONAL AND EMPLOYMENT INFORMATION.**

**“(a) NATIONAL ACTIVITIES.**—From funds appropriated under subsection (g), the Secretary, in consultation with appropriate Federal agencies, is authorized—

**“(1) to provide assistance to an entity to enable the entity—**

**“(A) to provide technical assistance to State entities designated under subsection (c) to enable the State entities to carry out the activities described in such subsection;**

**“(B) to disseminate information that promotes the replication of high quality practices described in subsection (c); and**

**“(C) to develop and disseminate products and services related to the activities described in subsection (c); and**

**“(2) to award grants to States that designate State entities in accordance with subsection (c) to enable the State entities to carry out the State level activities described in such subsection.**

**“(b) STATE APPLICATION.**—

**“(1) IN GENERAL.**—A jointly designated State entity described in subsection (c) that desires to receive a grant under this section shall submit an application to the Secretary at the same time the State submits its State plan under section 122, in such manner, and accompanied by such additional information, as the Secretary may reasonably require.

**“(2) CONTENTS.**—Each application submitted under paragraph (1) shall include a description of how the jointly designated State entity described in subsection (c) will provide information based on trends provided pursuant to section 15 of the Wagner-Peyser Act to inform program development.

**“(c) STATE LEVEL ACTIVITIES.**—In order for a State to receive a grant under this section, the eligible agency and the Governor of the State shall jointly designate an entity in the State—

**“(1) to provide support for career guidance and academic counseling programs designed to promote improved career and**

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education decision making by students (and parents, as appropriate)  
regarding education (including postsecondary education)  
and training options and preparations for high skill, high wage,  
or high demand occupations and non-traditional fields;

“(2) to make available to students, parents, teachers,  
administrators, faculty, and career guidance and academic  
counselors, and to improve accessibility with respect to,  
information and planning resources that relate academic and  
career and technical educational preparation to career goals  
and expectations;

“(3) to provide academic and career and technical education  
teachers, faculty, administrators, and career guidance and academic  
counselors with the knowledge, skills, and occupational  
information needed to assist parents and students, especially  
special populations, with career exploration, educational  
opportunities, education financing, and exposure to high skill,  
high wage, or high demand occupations and non-traditional  
fields, including occupations and fields requiring a baccalaureate  
degree;

“(4) to assist appropriate State entities in tailoring career  
related educational resources and training for use by such  
entities, including information on high skill, high wage, or  
high demand occupations in current or emerging professions  
and on career ladder information;

“(5) to improve coordination and communication among  
administrators and planners of programs authorized by this  
Act and by section 15 of the Wagner-Peyser Act at the Federal,  
State, and local levels to ensure nonduplication of efforts and  
the appropriate use of shared information and data;

“(6) to provide ongoing means for customers, such as students  
and parents, to provide comments and feedback on products  
and services and to update resources, as appropriate, to  
better meet customer requirements; and

“(7) to provide readily available occupational information  
such as—

“(A) information relative to employment sectors;

“(B) information on occupation supply and demand;  
and

“(C) other information provided pursuant to section  
15 of the Wagner-Peyser Act as the jointly designated  
State entity considers relevant.

“(d) NONDUPLICATION.—

“(1) WAGNER-PEYSER ACT.—The jointly designated State  
entity described under subsection (c) may use funds provided  
under subsection (a)(2) to supplement activities under section  
15 of the Wagner-Peyser Act to the extent such activities do  
not duplicate activities assisted under such section.

“(2) PUBLIC LAW 105–220.—None of the functions and activities  
assisted under this section shall duplicate the functions  
and activities carried out under Public Law 105–220.

“(e) FUNDING RULE.—Of the amounts appropriated to carry  
out this section, the Federal entity designated under subsection  
(a) shall use—

“(1) not less than 85 percent to carry out subsection (c);  
and



“(2) not more than 15 percent to carry out subsection (a).

“(f) REPORT.—The Secretary, in consultation with appropriate Federal agencies, shall prepare and submit to the appropriate committees of Congress, an annual report that includes—

“(1) a description of activities assisted under this section during the prior program year;

“(2) a description of the specific products and services assisted under this section that were delivered in the prior program year; and

“(3) an assessment of the extent to which States have effectively coordinated activities assisted under this section with activities authorized under section 15 of the Wagner-Peyser Act.

“(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2007 through 2012.



other test results, and other information provided by the employee or obtained by the Board. If such records reveal that there are significant differences in the medical findings, significant differences in opinions concerning the residual functional capacity evaluations among treating physicians, or significant differences between the results of functional capacity evaluations and residual functional capacity examinations, then the Board may request additional evidence from treating physicians, additional consultative examinations and/or residual functional capacity tests to resolve the inconsistencies;

(D) *Step 4.* When the Board determines that there is concordance of medical findings, then the Board will assess the quality of the evidence in accordance with § 220.112, which describes the weight to be given to the opinions of various physicians, and § 220.114, which describes how the Board evaluates symptoms such as pain. The Board will also assess the weight of evidence by utilizing § 220.14, which outlines factors to be used in determining the weight to be attributed to certain types of evidence. If, after assessment, the Board determines that there is no substantial objective evidence of an impairment, the Board will determine that the employee is not disabled;

(E) *Step 5.* Next, the Board determines the physical and mental demands of the employee's regular railroad occupation. In determining the job demands of the employee's regular railroad occupation, the Board will not only consider the employee's own description of his or her regular railroad occupation, but shall also consider the employer's description of the physical requirements and environmental factors relating to the employee's regular railroad occupation, as provided by the employer on the appropriate form set forth in appendix 3 of this part, and consult other sources such as the Dictionary of Occupational Titles and the job descriptions of occupations found in the Occupational Disability Claims Manual, as provided for in § 220.10;

(F) *Step 6.* Based upon the assessment of the evidence in paragraph (b)(2)(iv)(D) of this section, the Board shall determine the employee's resid-

ual functional capacity. The Board will then compare the job demands of the employee's regular railroad occupation, as determined in paragraph (b)(2)(iv)(E) of this section. If the demands of the employee's regular railroad occupation exceed the employee's residual functional capacity, then the Board will find the employee disabled. If the demands do not exceed the employee's residual functional capacity, then the Board will find the employee not disabled.

[56 FR 12980, Mar. 28, 1991, as amended at 63 FR 7541, Feb. 13, 1998]

**§ 220.14 Weighing of evidence.**

(a) *Factors which support greater weight.* Evidence will generally be given more weight if it meets one or more of the following criteria:

(1) The residual functional capacity evaluation is based upon functional objective tests with high validity and reliability;

(2) The medical evidence shows multiple impairments which have a cumulative effect on the employee's residual functional capacity;

(3) Symptoms associated with limitations are consistent with objective findings;

(4) There exists an adequate trial of therapies with good compliance, but poor outcome;

(5) There exists consistent history of conditions between treating physicians and other health care providers.

(b) *Factors which support lesser weight.* Evidence will generally be given lesser weight if it meets one or more of the following criteria:

(1) There is an inconsistency between the diagnoses of the treating physicians;

(2) There is inconsistency between reports of pain and functional impact;

(3) There is inconsistency between subjective symptoms and physical examination findings;

(4) There is evidence of poor compliance with treatment regimen, keeping appointments, or cooperating with treatment;

(5) There is evidence of exam findings which is indicative of exaggerated or potential malingering response;

## Railroad Retirement Board

## § 220.133

(7) The claimant not actually being hired to do work he or she could otherwise do; or

(8) The claimant not wishing to do a particular type of work.

(d) *Administrative notice of job data.* The following sources are used when the Board determines that unskilled, sedentary, light and medium jobs exist in the national economy:

(1) *Dictionary of Occupational Titles*, published by the Department of Labor.

(2) *County Business Patterns*, published by the Bureau of the Census.

(3) *Census Reports*, also published by the Bureau of the Census.

(4) *Occupational Analyses*, prepared for the Social Security Administration by various State employment agencies.

(5) *Occupational Outlook Handbook*, published by the Bureau of Labor Statistics.

(e) *Use of vocational experts and other specialists.* If the issue in determining whether the claimant is disabled is whether his or her work skills can be used in other work and the specific occupations in which they can be used, or there is a similarly complex issue, the Board may use the services of a vocational expert or other specialist. The Board will decide whether to use a vocational expert or other specialist.

### § 220.132 Physical exertion requirements.

To determine the physical exertion requirements of work in the national economy, jobs are classified as "sedentary", "light", "medium", "heavy", and "very heavy." These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. In making disability determinations the Board uses the following definitions:

(a) *Sedentary work.* Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and the other sedentary criteria are met.

(b) *Light work.* Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, the claimant must have the ability to do substantially all of these activities. If the claimant can do light work, the Board determines that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

(c) *Medium work.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If the claimant can do medium work, the Board determines that he or she can also do sedentary and light work.

(d) *Heavy work.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If the claimant can do heavy work, the Board determines that he or she can also do medium, light, and sedentary work.

(e) *Very heavy work.* Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If the claimant can do very heavy work, the Board determines that he or she can also do heavy, medium, light and sedentary work.

### § 220.133 Skill requirements.

(a) *General.* To evaluate skills and to help determine the existence in the national economy of work the claimant is able to do, occupations are classified as unskilled, semi-skilled, and skilled. In classifying these occupations, the Board uses materials published by the Department of Labor.

(b) *Unskilled work.* Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time (30 days). The job may or may not require

considerable strength. A job is considered unskilled if the claimant can usually learn to do the job in 30 days, and little job training and judgment are needed. The claimant does not gain work skills by doing unskilled jobs. For example, jobs are considered unskilled if primary work duties are—

- (1) Handling;
- (2) Feeding;
- (3) Offbearing (placing or removing materials from machines which are automatic or operated by others); or
- (4) Machine tending.

(c) *Semi-skilled work.* Semi-skilled work is work which needs some skills but does not require doing the more complex work duties. A job may be classified as semi-skilled where coordination and dexterity are necessary, as when hand or feet must be moved quickly to do repetitive tasks. Semi-skilled jobs may require—

- (1) Alertness and close attention to watching machine processes;
- (2) Inspecting, testing, or otherwise looking for irregularities;
- (3) Tending or guarding equipment, property, materials, or persons against loss, damage, or injury; or
- (4) Other types of activities which are similarly less complex than skilled work but more complex than unskilled work.

(d) *Skilled work.* Skilled work requires qualifications in which a person uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled jobs may require—

- (1) Laying out work;
- (2) Estimating quality;
- (3) Determining suitability and needed quantities of materials;
- (4) Making precise measurements;
- (5) Reading blueprints or other specifications;
- (6) Making necessary computations or mechanical adjustments to control or regulate work; or
- (7) Dealing with people, facts, figures or abstract ideas at a high level of complexity.

(e) *Skills that can be used in other work (transferability)*—(1) *What the Board means by transferable skills.* The Board considers the claimant to have skills that can be used in other jobs, when

the skilled or semi-skilled work activities the claimant did in past work can be used to meet the requirements of skilled or semi-skilled work activities of other jobs or kinds of work. This depends largely on the similarity of occupationally significant work activities among different jobs.

(2) *How the Board determines skills that can be transferred to other jobs.* Transferability is most probable and meaningful among jobs in which—

- (i) The same or a lesser degree of skill is required;
- (ii) The same or similar tools and machines are used; and
- (iii) The same or similar raw materials, products, processes, or services are involved.

(3) *Degrees of transferability.* There are degrees of transferability of skills ranging from very close similarities to remote and incidental similarities among jobs. A complete similarity of all three factors is not necessary for transferability. However, when skills are so specialized or have been acquired in such an isolated vocational setting (like many jobs in mining, agriculture, or fishing) that they are not readily usable in other industries, jobs, and work settings, they are considered not transferable.

#### § 220.134 Medical-vocational guidelines in appendix 2 of this part.

(a) The Dictionary of Occupational Titles includes information about jobs (classified by their exertional and skill requirements) that exist in the national economy. Appendix 2 of this part provides rules using this data reflecting major functional and vocational patterns.

(b) The Board applies that rules in appendix 2 of this part in cases where a claimant is not doing substantial gainful activity and is prevented by a severe impairment(s) from doing vocationally relevant past work.

(c) The rules in appendix 2 of this part do not cover all possible variations of factors. The Board does not apply these rules if one of the findings of fact about the claimant's vocational factors and residual functional capacity is not the same as the corresponding criterion of a rule. In these

instances, the Board gives full consideration to all relevant facts in accordance with the definitions and discussions under vocational considerations. However, if the findings of fact made about all factors are the same as the rule, the Board uses that rule to decide whether that claimant is disabled.

**§ 220.135 Exertional and nonexertional limitations.**

(a) *General.* The claimant's impairment(s) and related symptoms, such as pain, may cause limitations of function or restrictions which limit the claimant's ability to meet certain demands of jobs. These limitations may be exertional, nonexertional, or a combination of both. Limitations are classified as exertional if they affect the claimant's ability to meet the strength demands of jobs. The classification of a limitation as exertional is related to the United States Department of Labor's classification of jobs by various exertional levels (sedentary, light, medium, heavy, and very heavy) in terms of the strength demands for sitting, standing, walking, lifting, carrying, pushing, and pulling. Sections 220.132 and 220.134 of this part explain how the Board uses the classification of jobs by exertional levels (strength demands) which is contained in the Dictionary of Occupational Titles published by the Department of Labor, to determine the exertional requirements of work which exists in the national economy. Limitations or restrictions which affect the claimant's ability to meet the demands of jobs other than the strength demands, that is, demands other than sitting, standing, walking, lifting, carrying, pushing or pulling, are considered nonexertional. Sections 220.100(b)(5) and 220.180(h) of this part explain that if the claimant can no longer do the claimant's past relevant work because of a severe medically determinable impairment(s), the Board must determine whether the claimant's impairment(s), when considered along with the claimant's age, education, and work experience, prevents the claimant from doing any other work which exists in the national economy in order to decide whether the claimant is disabled or continues to be disabled. Paragraphs (b), (c), and (d) of this section

explain how the Board applies the medical-vocational guidelines in Appendix 2 of this part in making this determination, depending on whether the limitations or restrictions imposed by the claimant's impairment(s) and related symptoms, such as pain, are exertional, nonexertional, or a combination of both.

(b) *Exertional limitations.* When the limitations and restrictions imposed by the claimant's impairment(s) and related symptoms, such as pain, affect only the claimant's ability to meet the strength demands of jobs (sitting, standing, walking, lifting, carrying, pushing, and pulling), the Board considers that the claimant has only exertional limitations. When the claimant's impairment(s) and related symptoms only impose exertional limitations and the claimant's specific vocational profile is listed in a rule contained in Appendix 2 of this part, the Board will directly apply that rule to decide whether the claimant is disabled.

(c) *Nonexertional limitations.* (1) When the limitations and restrictions imposed by the claimant's impairment(s) and related symptoms, such as pain, affect only the claimant's ability to meet the demands of jobs other than the strength demands, the Board considers that the claimant has only nonexertional limitations or restrictions. Some examples of nonexertional limitations or restrictions include the following:

(i) Difficulty functioning because the claimant is nervous, anxious, or depressed;

(ii) Difficulty maintaining attention or concentration;

(iii) Difficulty understanding or remembering detailed instructions;

(iv) Difficulty in seeing or hearing;

(v) Difficulty tolerating some physical feature(s) of certain work settings, e.g., the claimant cannot tolerate dust or fumes; or

(vi) Difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching.

(2) If the claimant's impairment(s) and related symptoms, such as pain, only affect the claimant's ability to

APPENDIX 2 TO PART 220—MEDICAL-  
VOCATIONAL GUIDELINES

## Sec.

- 200.00 Introduction.
- 201.00 Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s).
- 202.00 Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s).
- 203.00 Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).
- 204.00 Maximum sustained work capability limited to heavy work (or very heavy work) as a result of severe medically determinable impairment(s).

200.00 *Introduction.* (a) The following rules reflect the major functional and vocational patterns which are encountered in cases which cannot be evaluated on medical considerations alone, where an individual with a severe medically determinable physical or mental impairment(s) is not engaging in substantial gainful activity and the individual's impairment(s) prevents the performance of his or her vocationally relevant past work. They also reflect the analysis of the various vocational factors (i.e., age, education, and work experience) in combination with the individual's residual functional capacity (used to determine his or her maximum sustained work capability for sedentary, light, medium, heavy, or very heavy work) in evaluating the individual's ability to engage in substantial gainful activity in other than his or her vocationally relevant past work. Where the findings of fact made with respect to a particular individual's vocational factors and residual functional capacity coincide with all of the criteria of a particular rule, the rule directs a conclusion as to whether the individual is or is not disabled. However, each of these findings of fact is subject to rebuttal and the individual may present evidence to refute such findings. Where any one of the findings of fact does not coincide with the corresponding criterion of a rule, the rule does not apply in that particular case and, accordingly, does not direct a conclusion of disabled or not disabled. In any instance where a rule does not apply, full consideration must be given to all of the relevant facts of the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations.

(b) The existence of jobs in the national economy is reflected in the "Decisions" shown in the rules; i.e., in promulgating the rules, administrative notice has been taken of the numbers of unskilled jobs that exist

throughout the national economy at the various functional levels (sedentary, light, medium, heavy, and very heavy) as supported by the "Dictionary of Occupational Titles" and the "Occupational Outlook Handbook," published by the Department of Labor; the "County Business Patterns" and "Census Surveys" published by the Bureau of the Census; and occupational surveys of light and sedentary jobs prepared for the Social Security Administration by various State employment agencies. Thus, when all factors coincide with the criteria of a rule, the existence of such jobs is established. However, the existence of such jobs for individuals whose remaining functional capacity or other factors do not coincide with the criteria of a rule must be further considered in terms of what kinds of jobs or types of work may be either additionally indicated or precluded.

(c) In the application of the rules, the individual's residual functional capacity (i.e., the maximum degree to which the individual retains the capacity for sustained performance of the physical-mental requirements of jobs), age, education, and work experience must first be determined. When assessing the person's residual functional capacity, the Board considers his or her symptoms (such as pain), signs, and laboratory findings together with other evidence the Board obtains.

(d) The correct disability decision (i.e., on the issue of ability to engage in substantial gainful activity) is found by then locating the individual's specific vocational profile. If an individual's specific profile is not listed within this appendix 2, a conclusion of disabled or not disabled is not directed. Thus, for example, an individual's ability to engage in substantial gainful work where his or her residual functional capacity falls between the ranges of work indicated in the rules (e.g., the individual who can perform more than light but less than medium work), is decided on the basis of the principles and definitions in the regulations, giving consideration to the rules for specific case situations in this appendix 2. These rules represent various combinations of exertional capabilities, age, education and work experience and also provide an overall structure for evaluation of those cases in which the judgments as to each factor do not coincide with those of any specific rule. Thus, when the necessary judgments have been made as to each factor and it is found that no specific rule applies, the rules still provide guidance for decisionmaking, such as in cases involving combinations of impairments. For example, if strength limitations resulting from an individual's impairment(s) considered with the judgments made as to the individual's age, education and work experience correspond to (or closely approximate) the factors of a particular rule, the adjudicator then has a frame of reference for considering the jobs or types of work precluded by other,

medical and nonmedical evidence, including the information described in § 404.1529(c).

[56 FR 57943, Nov. 14, 1991, as amended at 68 FR 51162, Aug. 26, 2003]

**§ 404.1546 Responsibility for assessing your residual functional capacity.**

(a) *Responsibility for assessing residual functional capacity at the State agency.* When a State agency makes the disability determination, a State agency medical or psychological consultant(s) (or a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) is responsible for assessing your residual functional capacity.

(b) *Responsibility for assessing residual functional capacity in the disability hearings process.* If your case involves a disability hearing under § 404.914, a disability hearing officer is responsible for assessing your residual functional capacity. However, if the disability hearing officer's reconsidered determination is changed under § 404.918, the Associate Commissioner for the Office of Disability Determinations or his or her delegate is responsible for assessing your residual functional capacity.

(c) *Responsibility for assessing residual functional capacity at the administrative law judge hearing or Appeals Council level.* If your case is at the administrative law judge hearing level under § 404.929 or at the Appeals Council review level under § 404.967, the administrative law judge or the administrative appeals judge at the Appeals Council (when the Appeals Council makes a decision) is responsible for assessing your residual functional capacity.

(d) *Responsibility for assessing residual functional capacity in claims adjudicated under part 405 of this chapter.* In claims adjudicated under the procedures in part 405 of this chapter at the Federal reviewing official, administrative law judge, and Decision Review Board levels of the administrative review process, the Federal reviewing official, administrative law judge, or the Decision Review Board is responsible for assessing your residual functional capacity.

[68 FR 51162, Aug. 26, 2003, as amended at 71 FR 16445, Mar. 31, 2006]

VOCATIONAL CONSIDERATIONS

**§ 404.1560 When we will consider your vocational background.**

(a) *General.* If you are applying for a period of disability, or disability insurance benefits as a disabled worker, or child's insurance benefits based on disability which began before age 22, or widow's or widower's benefits based on disability for months after December 1990, and we cannot decide whether you are disabled at one of the first three steps of the sequential evaluation process (see § 404.1520), we will consider your residual functional capacity together with your vocational background, as discussed in paragraphs (b) and (c) of this section.

(b) *Past relevant work.* We will first compare our assessment of your residual functional capacity with the physical and mental demands of your past relevant work.

(1) *Definition of past relevant work.* Past relevant work is work that you have done within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn to do it. (See § 404.1565(a).)

(2) *Determining whether you can do your past relevant work.* We will ask you for information about work you have done in the past. We may also ask other people who know about your work. (See § 404.1565(b).) We may use the services of vocational experts or vocational specialists, or other resources, such as the "Dictionary of Occupational Titles" and its companion volumes and supplements, published by the Department of Labor, to obtain evidence we need to help us determine whether you can do your past relevant work, given your residual functional capacity. A vocational expert or specialist may offer relevant evidence within his or her expertise or knowledge concerning the physical and mental demands of a claimant's past relevant work, either as the claimant actually performed it or as generally performed in the national economy. Such evidence may be helpful in supplementing or evaluating the accuracy of the claimant's description of his past work. In addition, a vocational expert or specialist may offer expert



what you have done in the past, we will ask you to tell us about all of the jobs you have had in the last 15 years. You must tell us the dates you worked, all of the duties you did, and any tools, machinery, and equipment you used. We will need to know about the amount of walking, standing, sitting, lifting and carrying you did during the work day, as well as any other physical or mental duties of your job. If all of your work in the past 15 years has been arduous and unskilled, and you have very little education, we will ask you to tell us about all of your work from the time you first began working. This information could help you to get disability benefits.

**§ 404.1566 Work which exists in the national economy.**

(a) *General.* We consider that work exists in the national economy when it exists in significant numbers either in the region where you live or in several other regions of the country. It does not matter whether—

- (1) Work exists in the immediate area in which you live;
- (2) A specific job vacancy exists for you; or
- (3) You would be hired if you applied for work.

(b) *How we determine the existence of work.* Work exists in the national economy when there is a significant number of jobs (in one or more occupations) having requirements which you are able to meet with your physical or mental abilities and vocational qualifications. Isolated jobs that exist only in very limited numbers in relatively few locations outside of the region where you live are not considered "work which exists in the national economy". We will not deny you disability benefits on the basis of the existence of these kinds of jobs. If work that you can do does not exist in the national economy, we will determine that you are disabled. However, if work that you can do does exist in the national economy, we will determine that you are not disabled.

(c) *Inability to obtain work.* We will determine that you are not disabled if your residual functional capacity and vocational abilities make it possible for you to do work which exists in the

national economy, but you remain unemployed because of—

- (1) Your inability to get work;
- (2) Lack of work in your local area;
- (3) The hiring practices of employers;
- (4) Technological changes in the industry in which you have worked;
- (5) Cyclical economic conditions;
- (6) No job openings for you;
- (7) You would not actually be hired to do work you could otherwise do; or
- (8) You do not wish to do a particular type of work.

(d) *Administrative notice of job data.* When we determine that unskilled, sedentary, light, and medium jobs exist in the national economy (in significant numbers either in the region where you live or in several regions of the country), we will take administrative notice of reliable job information available from various governmental and other publications. For example, we will take notice of—

- (1) *Dictionary of Occupational Titles*, published by the Department of Labor;
- (2) *County Business Patterns*, published by the Bureau of the Census;
- (3) *Census Reports*, also published by the Bureau of the Census;
- (4) *Occupational Analyses*, prepared for the Social Security Administration by various State employment agencies; and
- (5) *Occupational Outlook Handbook*, published by the Bureau of Labor Statistics.

(e) *Use of vocational experts and other specialists.* If the issue in determining whether you are disabled is whether your work skills can be used in other work and the specific occupations in which they can be used, or there is a similarly complex issue, we may use the services of a vocational expert or other specialist. We will decide whether to use a vocational expert or other specialist.

**§ 404.1567 Physical exertion requirements.**

To determine the physical exertion requirements of work in the national economy, we classify jobs as *sedentary*, *light*, *medium*, *heavy*, and *very heavy*. These terms have the same meaning as

they have in the *Dictionary of Occupational Titles*, published by the Department of Labor. In making disability determinations under this subpart, we use the following definitions:

(a) *Sedentary work*. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

(b) *Light work*. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

(c) *Medium work*. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work.

(d) *Heavy work*. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work.

(e) *Very heavy work*. Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, we determine that he or she can also do heavy, medium, light and sedentary work.

#### § 404.1568 Skill requirements.

In order to evaluate your skills and to help determine the existence in the national economy of work you are able to do, occupations are classified as unskilled, semi-skilled, and skilled. In classifying these occupations, we use materials published by the Department of Labor. When we make disability determinations under this subpart, we use the following definitions:

(a) *Unskilled work*. Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. For example, we consider jobs unskilled if the primary work duties are handling, feeding and offbearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are needed. A person does not gain work skills by doing unskilled jobs.

(b) *Semi-skilled work*. Semi-skilled work is work which needs some skills but does not require doing the more complex work duties. Semi-skilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing or otherwise looking for irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage or injury; or other types of activities which are similarly less complex than skilled work, but more complex than unskilled work. A job may be classified as semi-skilled where coordination and dexterity are necessary, as when hands or feet must be moved quickly to do repetitive tasks.

(c) *Skilled work*. Skilled work requires qualifications in which a person uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled work may require laying out work, estimating quality, determining the suitability and needed quantities of materials, making precise measurements, reading blueprints or

other specifications, or making necessary computations or mechanical adjustments to control or regulate the work. Other skilled jobs may require dealing with people, facts, or figures or abstract ideas at a high level of complexity.

(d) *Skills that can be used in other work (transferability)*—(1) *What we mean by transferable skills.* We consider you to have skills that can be used in other jobs, when the skilled or semi-skilled work activities you did in past work can be used to meet the requirements of skilled or semi-skilled work activities of other jobs or kinds of work. This depends largely on the similarity of occupationally significant work activities among different jobs.

(2) *How we determine skills that can be transferred to other jobs.* Transferability is most probable and meaningful among jobs in which—

(i) The same or a lesser degree of skill is required;

(ii) The same or similar tools and machines are used; and

(iii) The same or similar raw materials, products, processes, or services are involved.

(3) *Degrees of transferability.* There are degrees of transferability of skills ranging from very close similarities to remote and incidental similarities among jobs. A complete similarity of all three factors is not necessary for transferability. However, when skills are so specialized or have been acquired in such an isolated vocational setting (like many jobs in mining, agriculture, or fishing) that they are not readily usable in other industries, jobs, and work settings, we consider that they are not transferable.

(4) *Transferability of skills for individuals of advanced age.* If you are of advanced age (age 55 or older), and you have a severe impairment(s) that limits you to *sedentary* or *light* work, we will find that you cannot make an adjustment to other work unless you have skills that you can transfer to other skilled or semiskilled work (or you have recently completed education which provides for direct entry into skilled work) that you can do despite your impairment(s). We will decide if you have transferable skills as follows. If you are of advanced age and you

have a severe impairment(s) that limits you to no more than *sedentary* work, we will find that you have skills that are transferable to skilled or semi-skilled sedentary work only if the sedentary work is so similar to your previous work that you would need to make very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry. (See § 404.1567(a) and § 201.00(f) of appendix 2.) If you are of advanced age but have not attained age 60, and you have a severe impairment(s) that limits you to no more than *light* work, we will apply the rules in paragraphs (d)(1) through (d)(3) of this section to decide if you have skills that are transferable to skilled or semiskilled light work (see § 404.1567(b)). If you are *closely approaching retirement age* (age 60–64) and you have a severe impairment(s) that limits you to no more than *light* work, we will find that you have skills that are transferable to skilled or semi-skilled light work only if the light work is so similar to your previous work that you would need to make very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry. (See § 404.1567(b) and Rule 202.00(f) of appendix 2 to this subpart.)

[45 FR 55584, Aug. 20, 1980, as amended at 65 FR 18000, Apr. 6, 2000]

#### § 404.1569 Listing of Medical-Vocational Guidelines in appendix 2.

The Dictionary of Occupational Titles includes information about jobs (classified by their exertional and skill requirements) that exist in the national economy. Appendix 2 provides rules using this data reflecting major functional and vocational patterns. We apply these rules in cases where a person is not doing substantial gainful activity and is prevented by a severe medically determinable impairment from doing vocationally relevant past work. The rules in appendix 2 do not cover all possible variations of factors. Also, as we explain in § 200.00 of appendix 2, we do not apply these rules if one of the findings of fact about the person's vocational factors and residual functional capacity is not the same as the corresponding criterion of a rule.

In these instances, we give full consideration to all relevant facts in accordance with the definitions and discussions under vocational considerations. However, if the findings of fact made about all factors are the same as the rule, we use that rule to decide whether a person is disabled.

**§ 404.1569a Exertional and non-exertional limitations.**

(a) *General.* Your impairment(s) and related symptoms, such as pain, may cause limitations of function or restrictions which limit your ability to meet certain demands of jobs. These limitations may be exertional, non-exertional, or a combination of both. Limitations are classified as exertional if they affect your ability to meet the strength demands of jobs. The classification of a limitation as exertional is related to the United States Department of Labor's classification of jobs by various exertional levels (sedentary, light, medium, heavy, and very heavy) in terms of the strength demands for sitting, standing, walking, lifting, carrying, pushing, and pulling. Sections 404.1567 and 404.1569 explain how we use the classification of jobs by exertional levels (strength demands) which is contained in the Dictionary of Occupational Titles published by the Department of Labor, to determine the exertional requirements of work which exists in the national economy. Limitations or restrictions which affect your ability to meet the demands of jobs other than the strength demands, that is, demands other than sitting, standing, walking, lifting, carrying, pushing or pulling, are considered non-exertional. When we decide whether you can do your past relevant work (see §§ 404.1520(f) and 404.1594(f)(7)), we will compare our assessment of your residual functional capacity with the demands of your past relevant work. If you cannot do your past relevant work, we will use the same residual functional capacity assessment along with your age, education, and work experience to decide if you can adjust to any other work which exists in the national economy. (See §§ 404.1520(g) and 404.1594(f)(8).) Paragraphs (b), (c), and (d) of this section explain how we apply the medical-vocational guidelines in

appendix 2 of this subpart in making this determination, depending on whether the limitations or restrictions imposed by your impairment(s) and related symptoms, such as pain, are exertional, nonexertional, or a combination of both.

(b) *Exertional limitations.* When the limitations and restrictions imposed by your impairment(s) and related symptoms, such as pain, affect only your ability to meet the strength demands of jobs (sitting, standing, walking, lifting, carrying, pushing, and pulling), we consider that you have only exertional limitations. When your impairment(s) and related symptoms only impose exertional limitations and your specific vocational profile is listed in a rule contained in appendix 2 of this subpart, we will directly apply that rule to decide whether you are disabled.

(c) *Nonexertional limitations.* (1) When the limitations and restrictions imposed by your impairment(s) and related symptoms, such as pain, affect only your ability to meet the demands of jobs other than the strength demands, we consider that you have only nonexertional limitations or restrictions. Some examples of nonexertional limitations or restrictions include the following:

(i) You have difficulty functioning because you are nervous, anxious, or depressed;

(ii) You have difficulty maintaining attention or concentrating;

(iii) You have difficulty understanding or remembering detailed instructions;

(iv) You have difficulty in seeing or hearing;

(v) You have difficulty tolerating some physical feature(s) of certain work settings, e.g., you cannot tolerate dust or fumes; or

(vi) You have difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching.

(2) If your impairment(s) and related symptoms, such as pain, only affect your ability to perform the non-exertional aspects of work-related activities, the rules in appendix 2 do not direct factual conclusions of disabled

not direct a conclusion of disabled or not disabled. In any instance where a rule does not apply, full consideration must be given to all of the relevant facts of the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations.

(b) The existence of jobs in the national economy is reflected in the "Decisions" shown in the rules; *i.e.* in promulgating the rules, administrative notice has been taken of the numbers of unskilled jobs that exist throughout the national economy at the various functional levels (sedentary, light, medium, heavy, and very heavy) as supported by the "Dictionary of Occupational Titles" and the "Occupational Outlook Handbook," published by the Department of Labor; the "County Business Patterns" and "Census Surveys" published by the Bureau of the Census; and occupational surveys of light and sedentary jobs prepared for the Social Security Administration by various State employment agencies. Thus, when all factors coincide with the criteria of a rule, the existence of such jobs is established. However, the existence of such jobs for individuals whose remaining functional capacity or other factors do not coincide with the criteria of a rule must be further considered in terms of what kinds of jobs or types of work may be either additionally indicated or precluded.

(c) In the application of the rules, the individual's residual functional capacity (*i.e.*, the maximum degree to which the individual retains the capacity for sustained performance of the physical-mental requirements of jobs), age, education, and work experience must first be determined. When assessing the person's residual functional capacity, we consider his or her symptoms (such as pain), signs, and laboratory findings together with other evidence we obtain.

(d) The correct disability decision (*i.e.*, on the issue of ability to engage in substantial gainful activity) is found by then locating the individual's specific vocational profile. If an individual's specific profile is not listed within this appendix 2, a conclusion of disabled or not disabled is not directed. Thus, for example, an individual's ability to engage in substantial gainful work where his or her residual functional capacity falls between the ranges of work indicated in the rules (e.g., the individual who can perform more than light but less than medium work), is decided on the basis of the principles and definitions in the regulations, giving consideration to the rules for specific case situations in this appendix 2. These rules represent various combinations of exertional capabilities, age, education and work experience and also provide an overall structure for evaluation of those cases in which the judgments as to each factor do not coincide with those of any specific rule. Thus, when the necessary judgments have been made as

to each factor and it is found that no specific rule applies, the rules still provide guidance for decisionmaking, such as in cases involving combinations of impairments. For example, if strength limitations resulting from an individual's impairment(s) considered with the judgments made as to the individual's age, education and work experience correspond to (or closely approximate) the factors of a particular rule, the adjudicator then has a frame of reference for considering the jobs or types of work precluded by other, nonexertional impairments in terms of numbers of jobs remaining for a particular individual.

(e) Since the rules are predicated on an individual's having an impairment which manifests itself by limitations in meeting the strength requirements of jobs, they may not be fully applicable where the nature of an individual's impairment does not result in such limitations, e.g., certain mental, sensory, or skin impairments. In addition, some impairments may result solely in postural and manipulative limitations or environmental restrictions. Environmental restrictions are those restrictions which result in inability to tolerate some physical feature(s) of work settings that occur in certain industries or types of work, e.g., an inability to tolerate dust or fumes.

(1) In the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in this appendix 2. The rules do not direct factual conclusions of disabled or not disabled for individuals with solely nonexertional types of impairments.

(2) However, where an individual has an impairment or combination of impairments resulting in both strength limitations and nonexertional limitations, the rules in this subpart are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone and, if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience provide a framework for consideration of how much the individual's work capability is further diminished in terms of any types of jobs that would be contraindicated by the nonexertional limitations. Also, in these combinations of nonexertional and exertional limitations which cannot be wholly determined under the rules in this appendix 2, full consideration must be given to all of the relevant facts in the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations, which will provide insight into the adjudicative weight to be accorded each factor.

(see § 416.920), we will consider your residual functional capacity together with your vocational background, as discussed in paragraphs (b) and (c) of this section.

(b) *Past relevant work.* We will first compare our assessment of your residual functional capacity with the physical and mental demands of your past relevant work.

(1) *Definition of past relevant work.* Past relevant work is work that you have done within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn to do it. (See § 416.965(a).)

(2) *Determining whether you can do your past relevant work.* We will ask you for information about work you have done in the past. We may also ask other people who know about your work. (See § 416.965(b).) We may use the services of vocational experts or vocational specialists, or other resources, such as the "Dictionary of Occupational Titles" and its companion volumes and supplements, published by the Department of Labor, to obtain evidence we need to help us determine whether you can do your past relevant work, given your residual functional capacity. A vocational expert or specialist may offer relevant evidence within his or her expertise or knowledge concerning the physical and mental demands of a claimant's past relevant work, either as the claimant actually performed it or as generally performed in the national economy. Such evidence may be helpful in supplementing or evaluating the accuracy of the claimant's description of his past work. In addition, a vocational expert or specialist may offer expert opinion testimony in response to a hypothetical question about whether a person with the physical and mental limitations imposed by the claimant's medical impairment(s) can meet the demands of the claimant's previous work, either as the claimant actually performed it or as generally performed in the national economy.

(3) *If you can do your past relevant work.* If we find that you have the residual functional capacity to do your past relevant work, we will determine that you can still do your past work and are not disabled. We will not con-

sider your vocational factors of age, education, and work experience or whether your past relevant work exists in significant numbers in the national economy.

(c) *Other work.* (1) If we find that your residual functional capacity is not enough to enable you to do any of your past relevant work, we will use the same residual functional capacity assessment we used to decide if you could do your past relevant work when we decide if you can adjust to any other work. We will look at your ability to adjust to other work by considering your residual functional capacity and your vocational factors of age, education, and work experience. Any other work (jobs) that you can adjust to must exist in significant numbers in the national economy (either in the region where you live or in several regions in the country).

(2) In order to support a finding that you are not disabled at this fifth step of the sequential evaluation process, we are responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that you can do, given your residual functional capacity and vocational factors. We are not responsible for providing additional evidence about your residual functional capacity because we will use the same residual functional capacity assessment that we used to determine if you can do your past relevant work.

[68 FR 51166, Aug. 26, 2003]

**§ 416.962 Medical-vocational profiles showing an inability to make an adjustment to other work.**

(a) *If you have done only arduous unskilled physical labor.* If you have no more than a marginal education (see § 416.964) and work experience of 35 years or more during which you did only arduous unskilled physical labor, and you are not working and are no longer able to do this kind of work because of a severe impairment(s) (see §§ 416.920(c), 416.921, and 416.923), we will consider you unable to do lighter work, and therefore, disabled.

*Example to paragraph (a):* B is a 58-year-old miner's helper with a fourth grade education who has a lifelong history of unskilled arduous physical labor. B says that he is disabled

live or in several regions of the country), we will take administrative notice of reliable job information available from various governmental and other publications. For example, we will take notice of—

(1) *Dictionary of Occupational Titles*, published by the Department of Labor;

(2) *County Business Patterns*, published by the Bureau of the Census;

(3) *Census Reports*, also published by the Bureau of the Census;

(4) *Occupational Analyses* prepared for the Social Security Administration by various State employment agencies; and

(5) *Occupational Outlook Handbook*, published by the Bureau of Labor Statistics.

(e) *Use of vocational experts and other specialists.* If the issue in determining whether you are disabled is whether your work skills can be used in other work and the specific occupations in which they can be used, or there is a similarly complex issue, we may use the services of a vocational expert or other specialist. We will decide whether to use a vocational expert or other specialist.

#### § 416.967 Physical exertion requirements.

To determine the physical exertion requirements of work in the national economy, we classify jobs as *sedentary*, *light*, *medium*, *heavy*, and *very heavy*. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor. In making disability determinations under this subpart, we use the following definitions:

(a) *Sedentary work.* Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

(b) *Light work.* Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds.

Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

(c) *Medium work.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work.

(d) *Heavy work.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work.

(e) *Very heavy work.* Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, we determine that he or she can also do heavy, medium, light, and sedentary work.

#### § 416.968 Skill requirements.

In order to evaluate your skills and to help determine the existence in the national economy of work you are able to do, occupations are classified as unskilled, semi-skilled, and skilled. In classifying these occupations, we use materials published by the Department of Labor. When we make disability determinations under this subpart, we use the following definitions:

(a) *Unskilled work.* Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. For example, we consider jobs unskilled if the primary work duties are handling, feeding and offbearing (that is, placing or removing materials from machines which are

limits you to no more than *light* work, we will find that you have skills that are transferable to skilled or semi-skilled light work only if the light work is so similar to your previous work that you would need to make very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry. (See § 416.967(b) and Rule 202.00(f) of appendix 2 of subpart P of part 404 of this chapter.)

[45 FR 55621, Aug. 20, 1980, as amended at 65 FR 18001, Apr. 6, 2000]

**§ 416.969 Listing of Medical-Vocational Guidelines in appendix 2 of subpart P of part 404 of this chapter.**

The *Dictionary of Occupational Titles* includes information about jobs (classified by their exertional and skill requirements) that exist in the national economy. Appendix 2 provides rules using this data reflecting major functional and vocational patterns. We apply these rules in cases where a person is not doing substantial gainful activity and is prevented by a severe medically determinable impairment from doing vocationally relevant past work. The rules in appendix 2 do not cover all possible variations of factors. Also, as we explain in § 200.00 of appendix 2, we do not apply these rules if one of the findings of fact about the person's vocational factors and residual functional capacity is not the same as the corresponding criterion of a rule. In these instances, we give full consideration to all relevant facts in accordance with the definitions and discussions under vocational considerations. However, if the findings of fact made about all factors are the same as the rule, we use that rule to decide whether a person is disabled.

**§ 416.969a Exertional and non-exertional limitations.**

(a) *General.* Your impairment(s) and related symptoms, such as pain, may cause limitations of function or restrictions which limit your ability to meet certain demands of jobs. These limitations may be exertional, non-exertional, or a combination of both. Limitations are classified as exertional if they affect your ability to meet the strength demands of jobs. The classi-

fication of a limitation as exertional is related to the United States Department of Labor's classification of jobs by various exertional levels (sedentary, light, medium, heavy, and very heavy) in terms of the strength demands for sitting, standing, walking, lifting, carrying, pushing, and pulling. Sections 416.967 and 416.969 explain how we use the classification of jobs by exertional levels (strength demands) which is contained in the *Dictionary of Occupational Titles* published by the Department of Labor, to determine the exertional requirements of work which exists in the national economy. Limitations or restrictions which affect your ability to meet the demands of jobs other than the strength demands, that is, demands other than sitting, standing, walking, lifting, carrying, pushing or pulling, are considered non-exertional. When we decide whether you can do your past relevant work (see §§ 416.920(f) and 416.994(b)(5)(vi)), we will compare our assessment of your residual functional capacity with the demands of your past relevant work. If you cannot do your past relevant work, we will use the same residual functional capacity assessment along with your age, education, and work experience to decide if you can adjust to any other work which exists in the national economy. (See §§ 416.920(g) and 416.994(b)(5)(vii).) Paragraphs (b), (c), and (d) of this section explain how we apply the medical-vocational guidelines in appendix 2 of subpart P of part 404 of this chapter in making this determination, depending on whether the limitations or restrictions imposed by your impairment(s) and related symptoms, such as pain, are exertional, non-exertional, or a combination of both.

(b) *Exertional limitations.* When the limitations and restrictions imposed by your impairment(s) and related symptoms, such as pain, affect only your ability to meet the strength demands of jobs (sitting, standing, walking, lifting, carrying, pushing, and pulling), we consider that you have only exertional limitations. When your impairment(s) and related symptoms only impose exertional limitations and your specific vocational profile is listed in a rule contained in appendix 2, we will



**§ 627.235 General program requirements.**

(a) The requirements set forth in sections 141, 142 and 143 of the Act apply to all programs under titles I, II, and III of the Act, except as provided elsewhere in the Act.

(b) Recipients shall ensure that an individual enrolled in a JTPA program meets the requirements of section 167(a)(5) of the Act, Section 3 of the Military Selective Service Act (50 U.S.C. App. 453) and other requirements applicable to programs funded under the specific section or title of the Act under which the participant is enrolling (section 604).

(c) Recipients shall ensure that individuals are enrolled within 45 days of the date of eligibility determination or a new eligibility determination (including new application, if necessary) shall be made, except that eligible summer program applicants under title II-B may be enrolled within 45 days into a summer youth enrollee pool, and no subsequent eligibility determination need be made prior to participation during the period of that summer program. In addition, the 45-day enrollment requirement shall not apply for individuals who have a valid certificate of continuing eligibility under the title III program, as described in § 631.3 and § 631.53 of this chapter.

(d) Programs operated under titles I, II, and III of the Act are not subject to the provisions of 29 CFR part 97, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," except as otherwise explicitly provided in this chapter.

(e) If a recipient or SDA imposes a requirement that is in addition to the provisions of the Act and these regulations relating to the administration and operation of programs funded by the Act, the recipient or SDA shall identify the requirement as a State- or SDA-imposed requirement (section 124).

**§ 627.240 On-the-job training.**

(a) *General*—(1) *On-the-job training* (OJT) means training by an employer in the private or public sector given to a participant who, after objective assessment, and in accordance with the

ISS, has been referred to and hired by the employer following the development of an agreement with the employer to provide occupational training in exchange for reimbursement of the employer's extraordinary costs. On-the-job training occurs while the participant is engaged in productive work which provides knowledge and skills essential to the full and adequate performance of the job.

(2) This does not preclude a participant who has been trained by one employer from ultimately being placed in a comparable training-related position with another employer.

(3) On-the-job training may be sequenced with or accompanied by other types of training such as classroom training or literacy training.

(b) *Duration of OJT*. (1) OJT authorized for a participant shall be limited to a period not in excess of that required for the participant to acquire the skills needed for the OJT position. Except as described in paragraph (b) (3) of this section, the period of reimbursement to the employer under an OJT agreement shall not exceed 6 months of training.

(2) The 6-month duration of OJT may be expressed as a number of hours, days, or weeks the participant is expected to work in a 6-month period if the participant works full-time.

(3) In the event that a participant's regular employment is less than full-time and less than 500 hours of OJT has occurred by the end of 6 months, that participant may remain in OJT until 499 hours OJT hours have occurred.

(4)(i) Recipients shall develop policies and procedures for determining the average training duration for occupations including to reflect an individual participant's need for additional training time, or reduction in training time to reflect the individual participant's partial acquisition of needed skills. (In no case should an individual who is fully skilled in an occupation be placed in OJT in that occupation.)

(ii) In determining the average training time, consideration should be given to recognized reference materials, such as the "Dictionary of Occupational Titles" (DOT) and employer training plans. Such materials need not be limited to the DOT, however.

shares in exercising one or more of the definitional indicia.

*Establishment* means a public or private economic employing unit generally at a single physical location which produces and/or sells goods or services, for example, a mine, factory, store, farm orchard or ranch. It is usually engaged in one, or predominantly one, type of commercial or governmental activity. Each branch or subsidiary unit of a large employer in a geographical area or community should be considered an individual establishment, except that all such units in the same physical location shall be considered a single establishment. A component of an establishment which may not be located in the same physical structure (such as the warehouse of a department store) should also be considered as part of the parent establishment. For the purpose of the "seasonal farmworker" definition, farm labor contractors and crew leaders are not considered establishments; it is the organizations to which they supply the workers that are the establishments.

*Farmwork* means work performed for wages in agricultural production or agricultural services North American Industry Classification System (NAICS) 111, 112, and 115 (excluding the following codes: 1125 (under 112) and 1152 and 1153 (under 115)).

*Farmworker*, see *Agricultural worker*.

*Full application* means an application for an applicant who has participated in an application interview and which includes the applicant's personal characteristics, work history and an occupational classification and DOT code.

*Hearing Officer* means a Department of Labor Administrative Law Judge, designated to preside at DOL administrative hearings.

*Identification card* (applicant identification card) means a card given to the applicant on which are recorded identifying information and the dates of the applicant's visits to the local employment office.

*Intrastate job order* means a job order describing one or more hard-to-fill job openings, which a local office uses to request recruitment assistance from other local offices within the State.

*JS regulations* means the Federal regulations at 20 CFR parts 601-604, 620,

621, and 651-658, and at 29 CFR parts 8, 26, and 75.

*Job bank* means a computer assisted system which provides listings of current job openings in the area, on a regular basis, for distribution to JS offices and to cooperating agencies.

*Job development* means the process of securing a job interview with a public or private employer for a specific applicant for whom the local office has no suitable opening on file.

*Job information* means information derived from data compiled in the normal course of employment service activities from reports, job orders, applications and the like.

*Job opening* means a single job opportunity for which the local office has on file a request to select and refer on applicant or applicants.

*Job Information Service (JIS)* means a unit or an area within a JS local office where applicants primarily, on a self-service basis or with minimum professional help, can obtain specific and general information on where and how to get a job.

*Job referral* means (1) the act of bringing to the attention of an employer an applicant or group of applicants who are available for specific job openings and (2) the record of such referral. "Job referral" means the same as "referral to a job."

*Job Service (JS)* means the nationwide system of public employment offices, funded through the United States Employment Service (USES) as grantee State agencies, and the various offices of the State agencies.

*Labor market area* means a geographic area consisting of a central city (or cities) and the surrounding territory within a reasonable commuting distance.

*Labor Market Information (LMI)* means that body of knowledge pertaining to the socio-economic forces influencing the employment process in specific labor market areas. These forces, which affect labor demand-supply relationships and define the content of the LMI program, include population and growth characteristics, trends in industrial and occupational structure, technological developments,

shifts in consumer demands, unionization, trade disputes, retirement practices, wage levels, conditions of employment, training opportunities, job vacancies, and job search information.

*Local office manager* means the JS official in charge of all JS activities in a local office of a State agency.

*LMI* means labor market information.

*Migrant farmworker* is a seasonal farmworker who had to travel to do the farmwork so that he/she was unable to return to his/her permanent residence within the same day. Full-time students traveling in organized groups rather than with their families are excluded.

*Migrant food processing worker* means a person who during the preceding 12 months has worked at least an aggregate of 25 or more days or parts of days in which some work was performed in food processing (as classified in the North American Industry Classification System (NAICS) 311411, 311611, 311421 for food processing establishments), earned at least half of his/her earned income from processing work and was not employed in food processing year round by the same employer, provided that the food processing required travel such that the worker was unable to return to his/her permanent residence in the same day. Migrant food processing workers who are full-time students but who travel in organized groups rather than with their families are excluded.

*MSFW* means a migrant farmworker, a migrant food processing worker, or a seasonal farmworker.

*Occupational Information Network (O\*NET)* means the online reference database which contains detailed descriptions of U.S. occupations, distinguishing characteristics, classification codes, and information on tasks, knowledge, skills, abilities, and work activities as well as information on interests, work styles, and work values.

*O\*NET-SOC* means Standard Occupational Classification (SOC) titles and codes are used by Federal statistical agencies to classify workers into occupational categories for the purpose of collecting, calculating and disseminating data. DOL uses O\*NET-SOC titles and codes for the purposes of re-

porting data on training, certifications, and placement in employment by occupation.

*Partial application* means the application of an applicant who has not participated in an application interview and which does not include an occupational classification of DOT code. Partial applications prepared for Migrants and Seasonal Farmworkers must include a signed waiver for full services at that time in accordance with 20 CFR 653.103.

*Placement* means the hiring by a public or private employer of an individual referred by the employment office for a job or an interview, provided that the employment office completed all of the following steps:

(a) Prepared a job order form prior to referral, except in the case of a job development contact on behalf of a specific applicant;

(b) Made prior arrangements with the employer for the referral of an individual or individuals;

(c) Referred an individual who had not been specifically designated by the employer, except for referrals on agricultural job orders for a specific crew leader or worker;

(d) Verified from a reliable source, preferably the employer, that the individual had entered on a job; and

(e) Appropriately recorded the placement.

*Program Budget Plan (PBP)* means the annual planning document for the SWA required by Sec. 8 of the Wagner-Peyser Act containing the SWA's detailed planning, programming and budget for carrying out employment security activities. For the purpose of JS regulations, this definition shall be restricted to the employment service portion of the PBP.

*Public housing* means housing operated by or on behalf of any public agency.

*RA*; see *Regional Administrator*.

*Regional Administrator, Employment and Training Administration (RA)* means the chief DOL Employment and Training Administration (ETA) official in each DOL regional office.

*Respondent* means the employer or State agency (including a State agency

**Subpart B—Services for Migrant and Seasonal Farmworkers (MSFWs)**

SOURCE: 45 FR 39459, June 10, 1980, unless otherwise noted.

**§ 653.100 Purpose and scope of subpart.**

This subpart sets forth the principal regulations of the United States Employment Service (USES) for counseling, testing, and job and training referral services for migrant and seasonal farmworkers (MSFWs) on a basis which is qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs. It also contains requirements that State agencies establish a system to monitor their own compliance with USES regulations governing services to MSFWs, including the regulations under this subpart. Special services to ensure that MSFWs receive the full range of employment related services are established under this subpart.

**§ 653.101 Provision of services to migrant and seasonal farmworkers (MSFWs).**

(a) Each State agency and each local office shall offer to migrant and seasonal farmworkers (MSFWs) the full range of employment services, benefits and protections, including the full range of counseling, testing, and job and training referral services as are provided to non-MSFWs. In providing such services, the State agency shall consider and be sensitive to the preferences, needs, and skills of individual MSFWs and the availability of job and training opportunities.

(b) Each State agency shall assure that, in a local area, the same local offices, including itinerant and satellite offices, but exclusive of day-haul operations, offer services to both non-MSFWs and MSFWs. Separate farm labor service local offices, which offer only farmwork to agricultural workers while another local office serving the same geographical area offers other JS services to other applicants, are prohibited so that all applicants receive employment services on the same basis.

**§ 653.102 Job information.**

All State agencies shall make job order information conspicuous and available to MSFWs in all local offices. This information shall include Job Bank information in local offices where it is available. Such information shall be made available either by computer terminal, microfiche, hard copy, or other equally effective means. Each significant MSFW local office shall provide adequate staff assistance to each MSFW to use the job order information effectively. In those offices designated as significant MSFW bilingual offices, such assistance shall be provided to MSFWs in Spanish and English, wherever requested or necessary, during any period of substantial MSFW activity.

**§ 653.103 MSFW job applications.**

(a) Every local office shall determine whether or not applicants are MSFWs as defined at § 651.10 of this chapter.

(b) Except as provided in § 653.105, when an MSFW applies for JS services at a local office or is contacted by an Outreach worker, the services available through the JS shall be explained to the MSFW. In local offices which have been designated as significant MSFW bilingual offices by ETA, this explanation shall be made in Spanish, if necessary or requested during any period of substantial MSFW activity. Other local offices shall provide bilingual explanations wherever feasible.

(c) The local office staff member shall provide the MSFW a list of those services. The list shall be written in English and Spanish and shall specify those services which are available after completion of a full application and those services which are available after completion of a partial application. The JS staff member shall explain to each MSFW the advantages of completing a full application.

Applications shall be reviewed periodically by the local office manager or a member of his/her staff to ensure their accuracy and quality. Applications and the application-taking process shall also be reviewed during State and Federal onsite reviews by the State and Regional MSFW Monitor Advocates and/or review staff, who shall check

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overall accuracy and quality, and offer technical advice on corrections or improvements.

(d) If the MSFW wishes to complete a full application, the staff shall provide all assistance necessary to complete the application and shall ensure that the form includes complete information. It shall include, to the extent possible, the significant history of the MSFW's prior employment, training and educational background and a statement of any desired employment and any training needs in order to permit a thorough assessment of the applicant's skills, abilities and preferences. All applicable items shall be completed according to the ETA instructions for preparation of the application card (ES-511). Additional Occupational Informational Network (O\*NET) codes or keywords shall be assigned, where appropriate, based on the MSFW's work history, training, and skills, knowledges, and abilities. Secondary cards shall be completed and separately filed when keywords are not used. In extremely small local offices where the limited applicant load and file size does not require completion of secondary cards, additional O\*NET-SOC codes shall be noted on the primary application card.

(e) If an MSFW wishes any JS service, and does not wish or is unable to file a full application, the interviewer shall try to obtain as much information as possible for a partial application. The interviewer shall enter the information on the partial application. The interviewer shall offer to refer the applicant to any available jobs for which the MSFW may be qualified, and any JS services permitted by the limited information available. He/she shall advise the MSFW that he/she may file a full application at any time.

(f) Partial applications shall be completed according to ETA instructions.

(g) Partial applications for MSFWs shall be filed in accordance with local office procedures for filing other partial applications.

(h) To minimize the need for additional applications in other offices, States shall issue JS cards to MSFWs at the initial visit under the following conditions:

(1) When automated data retrieval systems are available in the State. In this instance, JS staff shall advise the MSFW that the JS card may be presented at any other JS office in the State and that services will be provided without completion of an additional application unless the services requested require additional information for adequate service delivery.

(2) When an MSFW is referred on an interstate or intrastate order. In this instance, when it is known to the order-holding local office (through the presentation of an JS card or otherwise) that the MSFW has completed a full application or partial application in the applicant holding office or elsewhere, an additional application shall not be taken by the order-holding office unless the MSFW requests JS services in addition to referral on the clearance order.

(Approved by the Office of Management and Budget under control number 1205-0039)

(Pub. L. No. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*))

[45 FR 39459, June 10, 1980, as amended at 46 FR 7772, Jan. 23, 1981; 47 FR 145, Jan. 5, 1982; 71 FR 35517, June 21, 2006]

**§ 653.104 Services to MSFW family members, farm labor contractors, and crew members.**

(a) In addition to other requirements in this subpart, the following special requirements are established for services to MSFW family members, farm labor contractors and crew members. Except as provided at §§ 653.103(e) and 653.105, no local office shall refer an MSFW family or crew unless each working member of the family or crew being referred, has filed either a full or partial application pursuant to § 653.103(b) at a local office or has been issued a JS card in instances set forth in § 653.103(h). Local offices may, upon request, provide general information, e.g., the types of crops in other areas, to farm labor contractors and family heads prior to the registration of all working members.

(b) No local office shall accept an application from an individual for employment as a farm labor contractor or fill an agricultural job order submitted by a farm labor contractor ("FLC") or farm labor contractor employee

(c) *What is to be submitted and what are its contents?* Form ETA 9035 or ETA 9035E.

(1) *General.* The employer (or the employer's authorized agent or representative) must submit to ETA one completed and dated LCA as prescribed in § 655.720. The electronic LCA, Form ETA 9035E, is found on the DOL Web site where the electronic submission is made, at <http://www.lca.doleta.gov>. Copies of the paper form, Form ETA 9035, and cover pages Form ETA 9035CP are available on the DOL Web site at <http://www.ows.doleta.gov> and from the ETA National Office, and may be used by employers with approval under § 655.720 to file by U.S. Mail during the approval's validity period.

(2) *Undertaking of the Employer.* In submitting the LCA, and by affixing the signature of the employer or its authorized agent or representative on Form ETA 9035E or Form ETA 9035, the employer (or its authorized agent or representative on behalf of the employer) attests the statements in the LCA are true and promises to comply with the labor condition statements (attestations) specifically identified in Forms ETA 9035E and ETA 9035, as well as set forth in full in the Form ETA 9035CP. The labor condition statements (attestations) are described in detail in §§ 655.731 through 655.734, and the additional attestations for LCAs filed by certain H-1B-dependent employers and employers found to have willfully violated the H-1B program requirements are described in §§ 655.736 through 655.739.

(3) *Signed Originals, Public Access, and Use of Certified LCAs.* In accordance with § 655.760(a) and (a)(1), the employer must maintain in its files and make available for public examination the LCA as submitted to ETA and as certified by ETA. When Form ETA 9035E is submitted electronically, a signed original is created by the employer (or by the employer's authorized agent or representative) printing out and signing the form immediately upon certification by ETA. When Form ETA 9035 is submitted by U.S. Mail as permitted by § 655.720(a), the form must bear the original signature of the employer (or of the employer's authorized agent or representative) when submitted to

ETA. For H-1B visas only, the employer must submit a copy of the signed, certified Form ETA 9035 or ETA 9035E to the U.S. Citizenship and Immigration Services (USCIS, formerly INS) in support of the Form I-129 petition, thereby reaffirming the employer's acceptance of all of the attestation obligations in accordance with 8 CFR 214.2(h)(4)(iii)(B)(2).

(4) *Contents of LCA.* Each LCA shall identify the occupational classification for which the LCA is being submitted and shall state:

(i) The occupation, by Dictionary of Occupational Titles (DOT) Three-Digit Occupational Groups code and by the employer's own title for the job;

(ii) The number of nonimmigrants sought;

(iii) The gross wage rate to be paid to each nonimmigrant, expressed on an hourly, weekly, biweekly, monthly, or annual basis;

(iv) The starting and ending dates of the nonimmigrants' employment;

(v) The place(s) of intended employment;

(vi) The prevailing wage for the occupation in the area of intended employment and the specific source (e.g., name of published survey) relied upon by the employer to determine the wage. If the wage is obtained from a SESA, now known as a State Workforce Agency (SWA), the appropriate box must be checked and the wage must be stated; the source for a wage obtained from a source other than a SWA must be identified along with the wage; and

(vii) For applications filed regarding H-1B nonimmigrants only (and not applications regarding H-1B1 nonimmigrants), the employer's status as to whether or not the employer is H-1B-dependent and/or a willful violator, and, if the employer is H-1B-dependent and/or a willful violator, whether the employer will use the application only in support of petitions for exempt H-1B nonimmigrants.

(5) *Multiple positions and/or places of employment.* The employer shall file a separate LCA for each occupation in which the employer intends to employ one or more nonimmigrants, but the

*United States (U.S.) worker* means any U.S. citizen or alien who is legally permitted to work indefinitely within the United States.

**§ 655.930 Addresses of Department of Labor regional offices.**

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont): One Congress Street 10th Floor, Boston, MA 02114-2021. Telephone: 617-565-4446.

Region II (New York, New Jersey, Puerto Rico, and the Virgin Islands): 201 Varick Street, room 755, New York, NY 10014. Telephone: 212-660-2185.

Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia): Post Office Box 8796, Philadelphia, PA 19101. Telephone: 215-596-6363.

Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee): 1371 Peachtree Street, N.E., Atlanta, GA 30309. Telephone: 404-347-3938.

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin): 230 South Dearborn Street, room 605, Chicago, IL 60604. Telephone: 312-353-1550.

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas): 525 Griffin Street, room 314, Dallas, TX 75202. Telephone: 214-767-4989.

Region VII (Iowa, Kansas, Missouri, and Nebraska) 911 Walnut Street, Kansas City, MO 64106. Telephone: 816-426-3796.

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming) 1961 Stout Street, 16th Floor, Denver, CO 80294. Telephone: 303-844-4613.

Region IX (Arizona, California, Guam, Hawaii, and Nevada) 71 Stevenson Street, room 830, San Francisco, CA 94119. Telephone: 415-744-6647.

Region X (Alaska, Idaho, Oregon, and Washington) 1111 Third Avenue, room 900, Seattle, WA 98101. Telephone: 206-553-5297.

The telephone numbers set forth in this section are not toll-free.

**§ 655.940 Employer attestations.**

(a) *Who may submit attestations?* An employer (or the employer's designated agent or representative) seeking to employ F-1 student(s) for off-campus work shall submit an attestation on Form ETA-9034. The attestation shall be signed by the employer (or the employer's designated agent or representative). For this purpose, the employer's authorized agent or representative shall mean an official of the employer who has the legal authority to commit

the employer to the terms and conditions of F-1 student attestations.

(b) *Where and when should attestations be submitted?* (1) Attestations shall be submitted, by U.S. mail, private carrier, or facsimile transmission, to the appropriate ETA Regional office, as defined in § 655.920 of this part, not later than 60 days after the employer's recruitment period (see paragraph (d) of this section) has ended and shall be accepted for filing, returned, or rejected by ETA in accordance with paragraph (f) of this section.

(2) Attestations shall also be submitted to the Designated School Official (DSO) at each educational institution from which the employer seeks to hire any F-1 student(s). Attestations may be filed simultaneously with ETA and the DSO, or the employer may file the approved attestation with the DSO. However, in no case shall the employer file the attestation with the DSO before filing the attestation with ETA or in the absence of filing the attestation with ETA.

(3) If the attestation is submitted simultaneously with ETA and the DSO, and ETA does not receive its copy of the attestation, the Administrator, for purposes of enforcement proceedings under subpart K of this part, shall consider that the attestation was accepted for filing by ETA as of the date the attestation is received by the DSO.

(c) *What should be submitted?* (1) Form ETA-9034. One completed and dated original Form ETA-9034 (or a facsimile), containing the attestation elements referenced in paragraphs (d) and (e) of this section, and the original signature (or a facsimile of the original signature) of the employer (or the employer's authorized agent or representative) and one copy of Form ETA-9034 shall be submitted to ETA. Each attestation form shall identify the position(s) for which the attestation is provided, state the occupational division in which the position is located, by Dictionary of Occupational Titles (DOT) Two-Digit Occupational Divisions code, and shall state the rate(s) of pay for the position(s). The DOT Two-Digit Occupational Division code is required for DOL recordkeeping and reporting purposes only and should not be used by the employer to determine

(c) Similarly, compensatory time earned or accrued by an employee for employment in excess of a standard established by the personnel policy or practice of an employer, or by custom, which does not result from the FLSA provision, is another example of "other" compensatory time.

(d) The FLSA does not require that the rate at which "other" compensatory time is earned has to be at a rate of one and one-half hours for each hour of employment. The rate at which "other" compensatory time is earned may be some lesser or greater multiple of the rate or the straight-time rate itself.

(e) The requirements of section 7(o) of the FLSA, including the limitations on accrued compensatory time, do not apply to "other" compensatory time as described above.

#### OTHER EXEMPTIONS

##### § 553.30 Occasional or sporadic employment-section 7(p)(2).

(a) Section 7(p)(2) of the FLSA provides that where State or local government employees, solely at their option, work occasionally or sporadically on a part-time basis for the same public agency in a different capacity from their regular employment, the hours worked in the different jobs shall not be combined for the purpose of determining overtime liability under the Act.

(b) *Occasional or sporadic.* (1) The term *occasional or sporadic* means infrequent, irregular, or occurring in scattered instances. There may be an occasional need for additional resources in the delivery of certain types of public services which is at times best met by the part-time employment of an individual who is already a public employee. Where employees freely and solely at their own option enter into such activity, the total hours worked will not be combined for purposes of determining any overtime compensation due on the regular, primary job. However, in order to prevent overtime abuse, such hours worked are to be excluded from computing overtime compensation due only where the occasional or sporadic assignments are not within the same general occupational

category as the employee's regular work.

(2) In order for an employee's occasional or sporadic work on a part-time basis to qualify for exemption under section 7(p)(2), the employee's decision to work in a different capacity must be made freely and without coercion, implicit or explicit, by the employer. An employer may suggest that an employee undertake another kind of work for the same unit of government when the need for assistance arises, but the employee must be free to refuse to perform such work without sanction and without being required to explain or justify the decision.

(3) Typically, public recreation and park facilities, and stadiums or auditoriums utilize employees in occasional or sporadic work. Some of these employment activities are the taking of tickets, providing security for special events (*e.g.*, concerts, sports events, and lectures), officiating at youth or other recreation and sports events, or engaging in food or beverage sales at special events, such as a county fair. Employment in such activity may be considered occasional or sporadic for regular employees of State or local government agencies even where the need can be anticipated because it recurs seasonally (*e.g.*, a holiday concert at a city college, a program of scheduled sports events, or assistance by a city payroll clerk in processing returns at tax filing time). An activity does not fail to be occasional merely because it is recurring. In contrast, for example, if a parks department clerk, in addition to his or her regular job, also regularly works additional hours on a part-time basis (*e.g.*, every week or every other week) at a public park food and beverage sales center operated by that agency, the additional work does not constitute intermittent and irregular employment and, therefore, the hours worked would be combined in computing any overtime compensation due.

(c) *Different capacity.* (1) In order for employment in these occasional or sporadic activities not to be considered subject to the overtime requirements of section 7 of the FLSA, the regular government employment of the individual performing them must also be in



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a different capacity, *i.e.*, it must not fall within the same general occupational category.

(2) In general, the Administrator will consider the duties and other factors contained in the definitions of the 3-digit categories of occupations in the *Dictionary of Occupational Titles* (except in the case of public safety employees as discussed below in section (3)), as well as all the facts and circumstances in a particular case, in determining whether employment in a second capacity is substantially different from the regular employment.

(3) For example, if a public park employee primarily engaged in playground maintenance also from time to time cleans an evening recreation center operated by the same agency, the additional work would be considered hours worked for the same employer and subject to the Act's overtime requirements because it is not in a *different capacity*. This would be the case even though the work was *occasional or sporadic*, and, was not regularly scheduled. Public safety employees taking on any kind of security or safety function within the same local government are never considered to be employed in a *different capacity*.

(4) However, if a bookkeeper for a municipal park agency or a city mail clerk occasionally referees for an adult evening basketball league sponsored by the city, the hours worked as a referee would be considered to be in a different general occupational category than the primary employment and would not be counted as hours worked for overtime purposes on the regular job. A person regularly employed as a bus driver may assist in crowd control, for example, at an event such as a winter festival, and in doing so, would be deemed to be serving in a different capacity.

(5) In addition, any activity traditionally associated with teaching (e.g., coaching, career counseling, etc.) will not be considered as employment in a *different capacity*. However, where personnel other than teachers engage in such teaching-related activities, the work will be viewed as employment in a *different capacity*, provided that these activities are performed on an occasional or sporadic basis and all other requirements for this provision are

met. For example, a school secretary could substitute as a coach for a basketball team or a maintenance engineer could provide instruction on auto repair on an occasional or sporadic basis.

### § 553.31 Substitution—section 7(p)(3).

(a) Section 7(p)(3) of the FLSA provides that two individuals employed in any occupation by the same public agency may agree, solely at their option and with the approval of the public agency, to substitute for one another during scheduled work hours in performance of work in the same capacity. The hours worked shall be excluded by the employer in the calculation of the hours for which the substituting employee would otherwise be entitled to overtime compensation under the Act. Where one employee substitutes for another, each employee will be credited as if he or she had worked his or her normal work schedule for that shift.

(b) The provisions of section 7(p)(3) apply only if employees' decisions to substitute for one another are made freely and without coercion, direct or implied. An employer may suggest that an employee substitute or "trade time" with another employee working in the same capacity during regularly scheduled hours, but each employee must be free to refuse to perform such work without sanction and without being required to explain or justify the decision. An employee's decision to substitute will be considered to have been made at his/her sole option when it has been made (i) without fear of reprisal or promise of reward by the employer, and (ii) exclusively for the employee's own convenience.

(c) A public agency which employs individuals who substitute or "trade time" under this subsection is not required to keep a record of the hours of the substitute work.

(d) In order to qualify under section 7(p)(3), an agreement between individuals employed by a public agency to substitute for one another at their own option must be approved by the agency. This requires that the agency be aware of the arrangement prior to the work being done, *i.e.*, the employer must know what work is being done, by

**§ 553.102 Employment by the same public agency.**

(a) Section 3(e)(4)(A)(ii) of the FLSA does not permit an individual to perform hours of volunteer service for a public agency when such hours involve the same type of services which the individual is employed to perform for the same public agency.

(b) Whether two agencies of the same State or local government constitute the same public agency can only be determined on a case-by-case basis. One factor that would support a conclusion that two agencies are separate is whether they are treated separately for statistical purposes in the Census of Governments issued by the Bureau of the Census, U.S. Department of Commerce.

**§ 553.103 "Same type of services" defined.**

(a) The 1985 Amendments provide that employees may volunteer hours of service to their public employer or agency provided "such services are not the same type of services which the individual is employed to perform for such public agency." Employees may volunteer their services in one capacity or another without contemplation of pay for services rendered. The phrase "same type of services" means similar or identical services. In general, the Administrator will consider, but not as the only criteria, the duties and other factors contained in the definitions of the 3-digit categories of occupations in the *Dictionary of Occupational Titles* in determining whether the volunteer activities constitute the "same type of services" as the employment activities. Equally important in such a determination will be the consideration of all the facts and circumstances in a particular case, including whether the volunteer service is closely related to the actual duties performed by or responsibilities assigned to the employee.

(b) An example of an individual performing services which constitute the "same type of services" is a nurse employed by a State hospital who proposes to volunteer to perform nursing services at a State-operated health clinic which does not qualify as a separate public agency as discussed in

§ 553.102. Similarly, a firefighter cannot volunteer as a firefighter for the same public agency.

(c) Examples of volunteer services which do not constitute the "same type of services" include: A city police officer who volunteers as a part-time referee in a basketball league sponsored by the city; an employee of the city parks department who serves as a volunteer city firefighter; and an office employee of a city hospital or other health care institution who volunteers to spend time with a disabled or elderly person in the same institution during off duty hours as an act of charity.

**§ 553.104 Private individuals who volunteer services to public agencies.**

(a) Individuals who are not employed in any capacity by State or local government agencies often donate hours of service to a public agency for civic or humanitarian reasons. Such individuals are considered volunteers and not employees of such public agencies if their hours of service are provided with no promise expectation, or receipt of compensation for the services rendered, except for reimbursement for expenses, reasonable benefits, and nominal fees, or a combination thereof, as discussed in § 553.106. There are no limitations or restrictions imposed by the FLSA on the types of services which private individuals may volunteer to perform for public agencies.

(b) Examples of services which might be performed on a volunteer basis when so motivated include helping out in a sheltered workshop or providing personal services to the sick or the elderly in hospitals or nursing homes; assisting in a school library or cafeteria; or driving a school bus to carry a football team or band on a trip. Similarly, individuals may volunteer as firefighters or auxiliary police, or volunteer to perform such tasks as working with retarded or handicapped children or disadvantaged youth, helping in youth programs as camp counselors, soliciting contributions or participating in civic or charitable benefit programs and volunteering other services needed to carry out charitable or educational programs.

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be used as documentation, but its adequacy will be evaluated in terms of compliance with the requirements of these guidelines.

(c) *Completeness.* In the event that evidence of validity is reviewed by an enforcement agency, the validation reports completed after the effective date of these guidelines are expected to contain the information set forth below. Evidence denoted by use of the word "(Essential)" is considered critical. If information denoted essential is not included, the report will be considered incomplete unless the user affirmatively demonstrates either its unavailability due to circumstances beyond the user's control or special circumstances of the user's study which make the information irrelevant. Evidence not so denoted is desirable but its absence will not be a basis for considering a report incomplete. The user should maintain and have available the information called for under the heading "Source Data" in sections 15B(11) and 15D(11). While it is a necessary part of the study, it need not be submitted with the report. All statistical results should be organized and presented in tabular or graphic form to the extent feasible.

B. *Criterion-related validity studies.* Reports of criterion-related validity for a selection procedure should include the following information:

(1) *User(s), location(s), and date(s) of study.* Dates and location(s) of the job analysis or review of job information, the date(s) and location(s) of the administration of the selection procedures and collection of criterion data, and the time between collection of data on selection procedures and criterion measures should be provided (Essential). If the study was conducted at several locations, the address of each location, including city and State, should be shown.

(2) *Problem and setting.* An explicit definition of the purpose(s) of the study and the circumstances in which the study was conducted should be provided. A description of existing selection procedures and cutoff scores, if any, should be provided.

(3) *Job analysis or review of job information.* A description of the procedure used to analyze the job or group of

jobs, or to review the job information should be provided (Essential). Where a review of job information results in criteria which may be used without a full job analysis (see section 14B(3)), the basis for the selection of these criteria should be reported (Essential). Where a job analysis is required a complete description of the work behavior(s) or work outcome(s), and measures of their criticality or importance should be provided (Essential). The report should describe the basis on which the behavior(s) or outcome(s) were determined to be critical or important, such as the proportion of time spent on the respective behaviors, their level of difficulty, their frequency of performance, the consequences of error, or other appropriate factors (Essential). Where two or more jobs are grouped for a validity study, the information called for in this subsection should be provided for each of the jobs, and the justification for the grouping (see section 14B(1)) should be provided (Essential).

(4) *Job titles and codes.* It is desirable to provide the user's job title(s) for the job(s) in question and the corresponding job title(s) and code(s) from U.S. Employment Service's Dictionary of Occupational Titles.

(5) *Criterion measures.* The bases for the selection of the criterion measures should be provided, together with references to the evidence considered in making the selection of criterion measures (essential). A full description of all criteria on which data were collected and means by which they were observed, recorded, evaluated, and quantified, should be provided (essential). If rating techniques are used as criterion measures, the appraisal form(s) and instructions to the rater(s) should be included as part of the validation evidence, or should be explicitly described and available (essential). All steps taken to insure that criterion measures are free from factors which would unfairly alter the scores of members of any group should be described (essential).

(6) *Sample description.* A description of how the research sample was identified and selected should be included (essential). The race, sex, and ethnic composition of the sample, including those groups set forth in section 4A above,

work products should be made (essential).

(5) *Job titles and codes.* It is desirable to provide the selection procedure user's job title(s) for the job(s) in question and the corresponding job title(s) and code(s) from the United States Employment Service's dictionary of occupational titles.

(6) *Selection procedure.* The selection procedure used as a measure of the construct should be completely and explicitly described or attached (essential). If commercially available selection procedures are used, they should be identified by title, form and publisher (essential). The research evidence of the relationship between the selection procedure and the construct, such as factor structure, should be included (essential). Measures of central tendency, variability and reliability of the selection procedure should be provided (essential). Whenever feasible, these measures should be provided separately for each relevant race, sex and ethnic group.

(7) *Relationship to job performance.* The criterion-related study(ies) and other empirical evidence of the relationship between the construct measured by the selection procedure and the related work behavior(s) for the job or jobs in question should be provided (essential). Documentation of the criterion-related study(ies) should satisfy the provisions of section 15B above or section 15E(1) below, except for studies conducted prior to the effective date of these guidelines (essential). Where a study pertains to a group of jobs, and, on the basis of the study, validity is asserted for a job in the group, the observed work behaviors and the observed work products for each of the jobs should be described (essential). Any other evidence used in determining whether the work behavior(s) in each of the jobs is the same should be fully described (essential).

(8) *Alternative procedures investigated.* The alternative selection procedures investigated and available evidence of their impact should be identified (essential). The scope, method, and findings of the investigation, and the conclusions reached in light of the findings should be fully described (essential).

(9) *Uses and applications.* The methods considered for use of the selection procedure (e.g., as a screening device with a cutoff score, for grouping or ranking, or combined with other procedures in a battery) and available evidence of their impact should be described (essential). This description should include the rationale for choosing the method for operational use, and the evidence of the validity and utility of the procedure as it is to be used (essential). The purpose for which the procedure is to be used (e.g., hiring, transfer, promotion) should be described (essential). If weights are assigned to different parts of the selection procedure, these weights and the validity of the weighted composite should be reported (essential). If the selection procedure is used with a cutoff score, the user should describe the way in which normal expectations of proficiency within the work force were determined and the way in which the cutoff score was determined (essential).

(10) *Accuracy and completeness.* The report should describe the steps taken to assure the accuracy and completeness of the collection, analysis, and report of data and results.

(11) *Source data.* Each user should maintain records showing all pertinent information relating to its study of construct validity.

(12) *Contact person.* The name, mailing address, and telephone number of the individual who may be contacted for further information about the validity study should be provided (essential).

E. *Evidence of validity from other studies.* When validity of a selection procedure is supported by studies not done by the user, the evidence from the original study or studies should be compiled in a manner similar to that required in the appropriate section of this section 15 above. In addition, the following evidence should be supplied:

(1) *Evidence from criterion-related validity studies—*a. *Job information.* A description of the important job behavior(s) of the user's job and the basis on which the behaviors were determined to be important should be provided (essential). A full description of the basis for determining that these important work behaviors are the same as those

*Nonprofit institution:* An institution that—

(1) Is owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which benefits any private shareholder or individual;

(2) Is legally authorized to operate as a nonprofit organization by each State in which it is physically located; and

(3) Is determined by the U.S. Internal Revenue Service to be an organization to which contributions are tax-deductible in accordance with section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)).

*One-academic-year training program:* An educational program that is at least one academic year as defined under 34 CFR 668.2.

*Preaccredited:* A status that a nationally recognized accrediting agency, recognized by the Secretary to grant that status, has accorded an unaccredited public or private nonprofit institution that is progressing toward accreditation within a reasonable period of time.

*Recognized equivalent of a high school diploma:* The following are the equivalent of a high school diploma—

(1) A General Education Development Certificate (GED);

(2) A State certificate received by a student after the student has passed a State-authorized examination that the State recognizes as the equivalent of a high school diploma;

(3) An academic transcript of a student who has successfully completed at least a two-year program that is acceptable for full credit toward a bachelor's degree; or

(4) For a person who is seeking enrollment in an educational program that leads to at least an associate degree or its equivalent and who has not completed high school but who excelled academically in high school, documentation that the student excelled academically in high school and has met the formalized, written policies of the institution for admitting such students.

*Recognized occupation:* An occupation that is—

(1) Listed in an "occupational division" of the latest edition of the *Dic-*

*tionary of Occupational Titles*, published by the U.S. Department of Labor; or

(2) Determined by the Secretary in consultation with the Secretary of Labor to be a recognized occupation.

*Regular student:* A person who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by that institution.

*Secretary:* The Secretary of the Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority.

*State:* A State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. The latter three are also known as the Freely Associated States.

*Telecommunications course:* A course offered principally through the use of one or a combination of technologies including television, audio, or computer transmission through open broadcast, closed circuit, cable, microwave, or satellite; audio conferencing; computer conferencing; or video cassettes or discs to deliver instruction to students who are separated from the instructor and to support regular and substantive interaction between these students and the instructor, either synchronously or asynchronously. The term does not include a course that is delivered using video cassettes or disc recordings unless that course is delivered to students physically attending classes at the institution providing the course during the same award year. If the course does not qualify as a telecommunications course, it is considered to be a correspondence course.

*Title IV, HEA program:* Any of the student financial assistance programs listed in 34 CFR 668.1(c).

(Authority: 20 U.S.C. 1071 *et seq.*, 1078–2, 1088, 1099b, 1099c, and 1141 and 26 U.S.C. 501(c).)

[59 FR 22336, Apr. 29, 1994, as amended at 63 FR 40622, July 29, 1998; 64 FR 58615, Oct. 29, 1999; 71 FR 45692, Aug. 9, 2006]

- (vi) Uncle,
- (vii) Aunt,
- (viii) Niece, or
- (ix) Nephew.

(c) *Attendant employed by the Federal government.* (1) VA may authorize a person in the regular civilian employment of the Federal government to act as an attendant. When assigned, the attendant:

- (i) Will be entitled to transportation and expenses, or
- (ii) May be allowed per diem in place of subsistence in accordance with the provisions of the Federal Travel Regulations (5 U.S.C. Chapter 57).

(2) VA will pay no fee to civilian employees of the Federal government who act as attendants.

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985]

**§21.376 Travel expenses for initial evaluation and counseling.**

When VA asks a disabled veteran to report to a designated place for an initial evaluation, reevaluation or counseling (including personal or vocational adjustment counseling), the veteran will travel to and from the place of evaluation and counseling at government expense. When a veteran, because of a severe disability, requires the services of an attendant while traveling, VA will authorize payment of travel expenses for the attendant under the provisions of §21.374.

(Authority: 38 U.S.C. 111)

**PERSONNEL TRAINING AND DEVELOPMENT**

**§21.380 Establishment of qualifications for personnel providing assistance under Chapter 31.**

(a) *General.* Notwithstanding any other provision of law or regulation, VA shall establish qualification standards for VBA personnel providing evaluation, rehabilitation, and case management services to eligible veterans under chapter 31, including:

- (1) Counseling psychologists;
- (2) Vocational rehabilitation specialists; and
- (3) Other staff providing professional and technical assistance.

(b) *Rehabilitation Act of 1973.* VA shall consider qualification standards established for comparable personnel under the Rehabilitation Act of 1973, when setting agency standards.

(Authority: 38 U.S.C. 3118(c))

**§21.382 Training and staff development for personnel providing assistance under Chapter 31.**

(a) *General.* VA shall provide a program of ongoing professional training and development for staff of the VR&E Service engaged in providing rehabilitation services under chapter 31. The objective of such training shall be to insure that rehabilitation services for disabled veterans are provided in accordance with the most advanced knowledge, methods, and techniques available for the rehabilitation of disabled persons. The areas in which training and development services may be provided to enhance staff skills include:

- (1) Evaluation and assessment;
- (2) Medical aspects of disability;
- (3) Psychological aspects of disability;
- (4) Counseling theory and techniques;
- (5) Personal and vocational adjustment;
- (6) Occupational information;
- (7) Placement processes and job development;
- (8) Special considerations in rehabilitation of the seriously disabled;
- (9) Independent living services;
- (10) Resources for training and rehabilitation; and
- (11) Utilizing research findings and professional publications.

(Authority: 38 U.S.C. 3118)

(b) *Training and development resources.* For the purpose of carrying out the provisions of paragraph (a) of this section VA may:

- (1) Employ the services of consultants;
- (2) Make grants to and contract with public and private agencies, including institutions of higher learning, to conduct workshop and training activities;
- (3) Authorize individual training at institutions of higher learning and other appropriate facilities; and