

Aberdeen, SD, Aberdeen Regional, VOR/DME or TACAN or GPS RWY 13, Amdt. 11
 Aberdeen, SD, Aberdeen Regional, VOR or GPS RWY 31, Amdt. 19
 Lewisburg, TN, Ellington, RNAV or GPS RWY 20, Orig.
 Mc Minnville, TN, Warren County Memorial, NDB or GPS RWY 23, Orig. A
 Paris, TN, Henry County, NDB or GPS RWY 2, Amdt. 2A
 Sevierville, TN, Gatlinburg-Pigeon Forge, VOR/DME or GPS RWY 10, Amdt. 4A
 Shelbyville, TN, Shelbyville Muni, VOR or GPS RWY 36, Amdt. 14
 Shelbyville, TN, Shelbyville Muni, RNAV or GPS RWY 18, Amdt. 3
 Austin, TX, Robert Mueller Muni, VOR/DME or TACAN or GPS RWY 13R, Amdt. 9
 Austin, TX, Robert Mueller Muni, VOR/DME or TACAN or GPS RWY 17, Amdt. 8
 Austin, TX, Robert Mueller Muni, VOR/DME or GPS RWY 31L, Orig.
 Beaumont, TX, Beaumont Muni, VOR/DME or GPS RWY 13, Amdt. 1
 Beaumont, TX, Beaumont Muni, VOR/DME or GPS RWY 31, Amdt. 3
 Burnet, TX, Burnet Muni Kate Craddock Field, VOR/DME RNAV or GPS RWY 19, Amdt. 2
 Burnet, TX, Burnet Muni Kate Craddock Field, NDB or GPS RWY 1, Amdt. 3
 Caddo Mills, TX, Caddo Mills Muni, NDB or GPS RWY 35L, Amdt. 1
 Gladewater, TX, Gladewater Muni, VOR/DME or GPS RWY 13, Amdt. 1
 Henderson, TX, Rusk County, NDB or GPS RWY 16, Amdt. 2
 Henderson, TX, Rusk County, VOR/DME or GPS-A, Amdt. 2
 Hereford, TX, Hereford Muni, NDB or GPS RWY 21, Amdt. 1
 Houston, TX, Houston Gulf, VOR or GPS RWY 13, Amdt. 2
 Houston, TX, Houston Gulf, VOR or GPS RWY 31, Amdt. 1
 Marfa, TX, Marfa Muni, VOR or GPS RWY 30, Amdt. 4
 Marlin, TX, Marlin, VOR/DME or GPS-A, Amdt. 5
 Mount Pleasant, TX, Mount Pleasant Muni, NDB or GPS RWY 35, Amdt. 3
 Mount Pleasant, TX, Mount Pleasant Muni, VOR/DME or GPS-A, Amdt. 4
 New Braunfels, TX, New Braunfels Muni, VOR/DME RNAV or GPS RWY 31, Amdt. 2
 New Braunfels, TX, New Braunfels Muni, NDB or GPS RWY 22, Amdt. 1
 New Braunfels, TX, New Braunfels Muni, VOR/DME RNAV or GPS RWY 13, Amdt. 2
 New Braunfels, TX, New Braunfels Muni, VOR/DME or GPS-A, Amdt. 8
 Tyler, TX, Tyler Pounds Field, VOR/DME or GPS RWY 4, Amdt. 1
 Tyler, TX, Tyler Pounds Field, VOR/DME or GPS RWY 22, Amdt. 1
 Tyler, TX, Tyler Pounds Field, NDB or GPS RWY 13, Amdt. 15
 Uvalde, TX, Garner Field, NDB or GPS RWY 33, Orig.
 Delta, UT, Delta Muni, VOR or GPS RWY 34, Amdt. 2
 Delta, UT, Delta Muni, VOR/DME or GPS RWY 16, Amdt. 1
 Fredericksburg, VA, Shannon, VOR or GPS RWY 24, Amdt. 7

Richmond, VA, Richmond Intl (Byrd Field), VOR or GPS RWY 2, Amdt. 5
 Richmond, VA, Richmond Intl (Byrd Field), VOR/DME RNAV or GPS RWY 20, Amdt. 5
 Richmond, VA, Richmond Intl (Byrd Field), VOR or GPS RWY 25, Amdt. 14
 Richmond, VA, Richmond Intl (Byrd Field), VOR or GPS RWY 16, Amdt. 25
 Richmond, VA, Richmond Intl (Byrd Field), VOR or GPS RWY 34, Amdt. 20
 West Dover, VT, Mount Snow, NDB or GPS RWY 1, Orig.
 Pasco, WA, Tri-Cities, VOR or GPS RWY 21R, Amdt. 4
 Pasco, WA, Tri-Cities, VOR/DME or GPS RWY 30, Amdt. 1
 Spokane, WA, Spokane Intl, VOR or GPS RWY 3, Amdt. 12
 Spokane, WA, Spokane Intl, RNAV or GPS RWY 21, Orig.
 Antigo, WI, Langlade County, NDB or GPS RWY 16, Amdt. 3
 Hayward, WI, Hayward Muni, NDB or GPS RWY 20, Amdt. 11
 Hayward, WI, Hayward Muni, VOR/DME or GPS RWY 2, Orig.
 Mosinee, WI, Central Wisconsin, NDB or GPS RWY 17, Orig.
 Mosinee, WI, Central Wisconsin, VOR or GPS-A, Amdt. 8
 Mosinee, WI, Central Wisconsin, VOR/DME or GPS RWY 35, Amdt. 6
 Rhinelander, WI, Rhinelander-Oneida County, VOR or GPS RWY 9, Amdt. 4
 Rhinelander, WI, Rhinelander-Oneida County, VOR/DME or GPS RWY 23, Amdt. 10
 Rhinelander, WI, Rhinelander-Oneida County, VOR/DME or GPS RWY 27, Orig.
 Rhinelander, WI, Rhinelander-Oneida County, VOR/DME or GPS RWY 5, Orig.
 Clarksburg, WV, Benedum, VOR or GPS RWY 3, Amdt. 14
 Wheeling, WV, Wheeling Ohio County, VOR or GPS RWY 21, Amdt. 14
 Laramie, WY, Laramie Regional, VOR or TACAN or GPS RWY 12, Amdt. 5
 Laramie, WY, Laramie Regional, VOR/DME or TACAN or GPS RWY 30, Amdt. 6
 Torrington, WY, Torrington Muni, NDB or GPS RWY 10, Orig.
 Torrington, WY, Torrington Muni, NDB or GPS RWY 28, Orig.
 The following are corrected procedure titles adding "or GPS" published in Transmittal Letter 94-07.
 Americus, GA, Souther Field, NDB or GPS RWY 23, Amdt. 2B
 Elizabeth City, NC, Elizabeth City Coast Guard Air Station/Muni, VOR/DME or GPS RWY 1, Amdt. 11
 Portsmouth, NH, Pease International Tradeport, VOR or TACAN or GPS RWY 34, Orig.
 Fayetteville, TN, Fayetteville Muni, VOR/DME or GPS RWY 1, Orig. A
 [FR Doc. 94-9562 Filed 4-19-94; 8:45 am]
 BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1209

Boards and Committees

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR part 1209 by removing Subpart 1, "Board of Contract Appeals." The NASA Board of Contract Appeals no longer exists as a separate entity and its functions were assumed by the Armed Services Board of Contract Appeals.
EFFECTIVE DATE: July 12, 1993.

FOR FURTHER INFORMATION CONTACT: Margaret M. Herring, 202-358-2264.

SUPPLEMENTARY INFORMATION:

List of Subjects in 14 CFR Part 1209

Boards and committees, Organization and functions (Government agencies).

Under the authority, 42 U.S.C. 2473, 14 CFR part 1209 is amended as follows:

PART 1209—[AMENDED]

Subpart 1—[Removed and Reserved]

In 14 CFR part 1209, Subpart 1 (consisting of §§ 1209.100 through 1209.104) is removed and reserved.

Benita A. Cooper,
Associate Administrator for Management Systems and Facilities.
 [FR Doc. 94-9465 Filed 4-19-94; 8:45 am]
 BILLING CODE 7510-01-M

DEPARTMENT OF STATE

[Public Notice 1985]

22 CFR Part 145

Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

ACTION: Final rule.

SUMMARY: This final rule establishes regulations for grants and cooperative agreements with institutions of higher education, hospitals, and other non-profit organizations.

DATES: This regulation is effective October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Lloyd, Office of the Procurement Executive, room 603, SA-6, U.S. Department of State, Washington, DC 20522-0602. Tel. (703) 516-1690.

SUPPLEMENTARY INFORMATION: The Department of State establishes this

final rule as part 145 of title 22 of the Code of Federal Regulations.

The regulation implements Office of Management and Budget Circular A-110, published in the *Federal Register* on November 29, 1993 (58 FR 62992). The regulation is essentially the same as Circular A-110, except for editorial changes, internal approval procedures, and exclusion of foreign and international organizations and agreements performed overseas. The Circular was published as a proposed rule in the *Federal Register*, and the final version of the Circular published on November 29, 1993 addressed the public comments received.

List of Subjects in 22 CFR Part 145

Administrative practices and procedure, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Title 22 of the Code of Federal Regulations, chapter I, is amended as set forth below.

Lloyd W. Pratsch,

Procurement Executive.

Part 145 is added to subchapter O to read as follows:

PART 145—GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

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- 145.2 Definitions.
- 145.3 Effect on other issuances.
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- 145.21 Standards for financial management systems.
- 145.22 Payment.
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- 145.31 Insurance coverage.
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- 145.44 Procurement procedures.
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Reports and Records

- 145.50 Purpose of reports and records.
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- 145.53 Retention and access requirements for records.

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- 145.60 Purpose of termination and enforcement.
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- 145.70 Purpose.
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Appendix A to Part 145—Clauses for Contracts and Small Purchases Awarded by Recipient

Authority: 22 U.S.C. 2658.1

Subpart A—General

§ 145.1 Purpose.

This regulation establishes uniform administrative requirements for Department of State grants and cooperative agreements awarded to institutions of higher education, hospitals, and other non-profit organizations pursuant to OMB Circular A-110. Non-profit organizations that implement Federal programs for the States are also subject to State requirements. Copies of the OMB circulars mentioned in this part may be ordered from the Office of Management and Budget Publications Office (202) 395-7000.

§ 145.2 Definitions.

(a) *Accrued expenditures* means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and,

(3) Other amounts becoming owed under programs for which no current services or performance is required.

(b) *Accrued income* means the sum of:

(1) Earnings during a given period from

(i) Services performed by the recipient, and

(ii) Goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired.

Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) *Advance* means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) *Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: Technical assistance, which provides services instead of money;

other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(f) *Cash contributions* means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(g) *Closeout* means the process by which an awarding agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and awarding agency.

(h) *Contract* means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(i) *Cooperative agreement*, as defined in 31 U.S.C. 6305, means a legal instrument reflecting a relationship

between the United States Government and a recipient when the principal purpose of the relationship is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by law, instead of acquiring property or services for the direct use of the United States Government, and substantial involvement is expected between the awarding agency and the recipient when carrying out the activity contemplated in the agreement.

(j) *Cost sharing or matching* means that portion of project or program costs not borne by the Federal Government.

(k) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

(l) *Disallowed costs* means those charges to an award that the awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(m) *Equipment* means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(n) *Excess property* means property under the control of any awarding agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(o) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds, where the awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(p) *Federal awarding agency or awarding agency* means the Federal agency that provides an award to the recipient.

(q) *Federal funds authorized* means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency

regulations or agency implementing instructions.

(r) *Federal share of real property, equipment, or supplies* means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(s) *Funding period* means the period of time when Federal funding is available for obligation by the recipient.

(t) *Grant*, as defined in 31 U.S.C. 6304, means a legal instrument reflecting a relationship between the United States Government and a recipient when the principal purpose of the relationship is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by law, instead of acquiring property or services for the direct use of the United States Government, and substantial involvement is not expected between the awarding agency and the recipient when carrying out the activity contemplated in the agreement.

(u) *Intangible property and debt instruments* means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(v) *Obligations* means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(w) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(x) *Personal property* means property of any kind except real property. It may

be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(y) *Prior approval* means written approval by an authorized official evidencing prior consent.

(z) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in § 145.24 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(aa) *Project costs* means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(bb) *Project period* means the period established in the award document during which Federal sponsorship begins and ends.

(cc) *Property* means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(dd) *Real property* means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(ee) *Recipient* means an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program.

(1) The term includes public and private institutions of higher education; public and private hospitals; other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers; and commercial organizations receiving grants or cooperative agreements from the Department.

(2) The term does not include any of the following which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients:

(i) Foreign organizations (governmental or non-governmental);
 (ii) International organizations (such as agencies of the United Nations); or
 (iii) Organizations whose assistance agreement is for work to be performed outside the United States.

(3) The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

(ff) *Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(gg) *Small awards* means a grant or cooperative agreement not exceeding \$100,000 or the small purchase limitation fixed at 41 U.S.C. 403(11), whichever is greater.

(hh) *Small purchase limitation*, for procurements transactions awarded by recipients, means \$100,000 or the small purchase limitation fixed at 41 U.S.C. 403(11), whichever is greater.

(ii) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" in § 145.2(e).

(jj) *Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the awarding agency.

(kk) *Supplies* means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

(ll) *Suspension* means an action by a awarding agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the awarding agency. Suspension of an award is a separate action from suspension under Federal agency regulations implementing E.O.s 12549 and 12689, "Debarment and Suspension."

(mm) *Termination* means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(nn) *Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(oo) *Unliquidated obligations*, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(pp) *Unobligated balance* means the portion of the funds authorized by the awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(qq) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(rr) *Working capital advance* means a procedure where by funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 145.3 Effect on other issuances.

For awards subject to this regulation, all administrative requirements of

codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this regulation are superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 145.4.

§ 145.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this regulation when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this regulation shall be permitted only in unusual circumstances. The Department may apply more restrictive requirements to a class of recipients when approved by OMB. The Department may apply less restrictive requirements when issuing small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by the Department. Deviation requests shall be submitted to the Office of the Procurement Executive (A/OPE) for approval or transmittal to OMB.

§ 145.5 Subawards.

Unless sections of this regulation specifically exclude subrecipients from coverage, the provisions of this regulation shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of part 135 of this chapter implementing the grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

Subpart B—Pre-Award Requirements

§ 145.10 Purpose.

Sections 145.11 through 145.17 prescribe forms and instructions and other pre-award matters to be used in applying for Federal awards.

§ 145.11 Pre-award policies.

(a) *Use of grants and cooperative agreements, and contracts.* In each instance, the awarding agency shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative

agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government. The Department may not award grants or cooperative agreements unless specific statutory authority exists for a program allowing the award of Federal assistance.

(b) *Public notice and priority setting.*

(1) The Department shall notify the public of its intended funding priorities for discretionary grant programs, except for:

- (i) Awards for which funding priorities are established by Federal statute,
- (ii) Small awards, and
- (iii) Awards for which program purposes would not be served by public notice.

(2) In the case of the exception in paragraph (b)(1)(iii) of this section, the award file shall be documented with the rationale for not issuing a public notice.

§ 145.12 Forms for applying for Federal assistance.

(a) Department Grants Officers shall comply with the applicable report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public," with regard to all forms used by the awarding agency in place of or as a supplement to the Standard Form 424 (SF-424) series.

(b) Applicants shall use the SF-424 series or those forms and instructions prescribed by the Grants Officer and approved by the Office of the Procurement Executive (A/OPE).

(c) For Federal programs covered by Executive Order 12372, "Intergovernmental Review of Federal Programs," the applicant shall complete the appropriate sections of the SF-424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the awarding agency or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made

has been selected by that State for review.

(d) Department Grants Officers who do not use the SF-424 form should indicate whether the application is subject to review by the State under Executive Order 12372.

§ 145.13 Debarment and suspension.

The Department and recipients shall comply with the nonprocurement debarment and suspension common rule implementing Executive Orders 12549 and 12689, "Debarment and Suspension," as implemented in 22 CFR part 137. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 145.14 Special award conditions.

If an applicant or recipient: has a history of poor performance, is not financially stable, has a management system that does not meet the standards prescribed in this regulation, has not conformed to the terms and conditions of a previous award, or is not otherwise responsible, the Department may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: The nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

§ 145.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. Federal awarding agencies shall follow the provisions of E.O. 12770, "Metric Usage in Federal Government Programs."

§ 145.16 Resource Conservation and Recovery Act.

Under the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94-580 codified at 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247-254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

§ 145.17 Certifications and representations.

Unless prohibited by statute or codified regulation, the Department is authorized to accept and encourages recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the Department. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

Subpart C—Post-Award Requirements

Financial and Program Management

§ 145.20 Purpose of financial and program management.

Sections 145.21 through 145.28 prescribe standards for financial management systems, methods for making payments and rules for: Satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§ 145.21 Standards for financial management systems.

(a) The Department shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following:

- (1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or

program in accordance with the reporting requirements set forth in § 145.52. If the Department requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Department, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The Department may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to

protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

§ 145.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain: Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and financial management systems that meet the standards for fund control and accountability as established in § 145.21. Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the Department to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients shall be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on SF-270, "Request for Advance or Reimbursement," or other forms as may be authorized by OMB (e.g., SF-1034). This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by

special Department instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) cannot be met. The Department may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the Department shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients shall be authorized to submit request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the Department has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Department may provide cash on a working capital advance basis. Under this procedure, the Department shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the Department shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, the Department shall not withhold payments for proper charges made by recipients at any time during the project period unless paragraphs (h) (1) or (2) of this section apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A-129, "Managing Federal Credit Programs." Under such conditions, the Department may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are

corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2), the Department shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless paragraphs (k) (1), (2) or (3) of this section apply.

(1) The recipient receives less than \$120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of \$250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to the Department for submission to Treasury. Interest amounts up to \$250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Department, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this regulation, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. The Department shall not require more than an original and two copies of these forms except if OMB approval is obtained.

(1) *SF-270, Request for Advance or Reimbursement*. The Department shall use the SF-270 as a standard form for

all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. Grants Officers may use forms equivalent to the SF-270 if approved in writing by the Office of the Procurement Executive (A/OPE). The Department has the option of using the SF-270 for construction programs in lieu of the SF-271, "Outlay Report and Request for Reimbursement for Construction Programs."

(2) *SF-271, Outlay Report and Request for Reimbursement for Construction Programs*. The Department shall use the SF-271 as the standard form to be used for requesting reimbursement for construction programs. However, the Department may substitute the SF-270 when the Department determines that it provides adequate information to meet Federal needs.

§ 145.23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria.

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other Federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by the Department.

(7) Conform to other provisions of this regulation, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Department Grants Officer.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If the Department authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of paragraphs (c) (1) or (2) of this section.

(1) The certified value of the remaining life of the property recorded

in the recipient's accounting records at the time of donation.

(2) *The current fair market value*. However, when there is sufficient justification, the Department may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if paragraph (g) (1) or (2) of this section apply.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed,

provided that the Department has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

§ 145.24 Program income.

(a) The Department shall apply the standards set forth in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with the terms and conditions of the award, shall be used in one or more of the ways listed in the following.

(1) Added to funds committed to the project by the Department and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When the award authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2),

program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3).

(d) In the event that the Department does not specify in the terms and conditions of the award how program income is to be used, paragraph (b)(3) shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) shall apply automatically unless the awarding agency indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in § 145.14.

(e) Unless the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See §§ 145.30 through 145.37).

(h) Unless the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

§ 145.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon Department requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section, unless, at the discretion of the Grants Officer, a small percentage variance is allowed by the terms of the grant or cooperative agreement.

(c) For nonconstruction awards, recipients shall request prior approvals from the Department for one or more of

the following program or budget related reasons.

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the Department.

(6) The inclusion, unless waived by the Department, of costs that require prior approval in accordance with OMB Circular A-21, "Cost Principles for Institutions of Higher Education," OMB Circular A-122, "Cost Principles for Non-Profit Organizations," or 45 CFR part 74 appendix E, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals," or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items described by this regulation may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, Grants Officers are authorized, at their option, to waive cost-related and administrative prior written approvals required by this regulation and OMB Circulars A-21 and A-122. Such waivers may include authorizing recipients to do any one or more of the following.

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Department. All pre-award costs are incurred at the recipient's risk (i.e., the Department is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify the Department in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the Department provides otherwise in the award, the prior approval requirements described in paragraph (e) are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) applies.

(f) The Department may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds \$100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Grants Officer. Grants Officers shall not permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j), do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from the Grants Officer for budget revisions whenever paragraphs (h) (1), (2) or (3) of this section apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in § 145.27.

(i) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(j) When the Department makes an award that provides support for both construction and nonconstruction work, the Department may require the recipient to request prior approval from the Department before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, the Department shall require recipients to notify the Department in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than \$5,000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the Grants Officer indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, the Grants Officer shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Grants Officer shall inform the recipient in writing of the date when the recipient may expect the decision.

§ 145.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations shall be subject to the audit requirements contained in OMB Circular A-133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions."

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act (31 U.S.C. 7501-7) and Department regulations at part 135 of this chapter implementing OMB Circular A-128, "Audits of State and Local Governments."

(c) Hospitals not covered by the audit provisions of OMB Circular A-133 shall be subject to the audit requirements of the Department.

(d) Commercial organizations shall be subject to the audit requirements of the Department or the prime recipient as incorporated into the award document.

§ 145.27 Allowable costs.

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with

the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A-87, "Cost Principles for State and Local Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A-122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A-21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals." The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A-122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

§ 145.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Department, unless otherwise provided in the grant or cooperative agreement.

Property Standards

§ 145.30 Purpose of property standards.

Sections 145.31 through 145.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. The Department shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§ 145.31 through 145.37.

§ 145.31 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property

need not be insured unless required by the terms and conditions of the award.

§ 145.32 Real property.

Each award shall prescribe any applicable requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following:

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the Department.

(b) The recipient shall obtain written approval by the Department for the use of real property in other Federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under Federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by the Department.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b), the recipient shall request disposition instructions from the cognizant Grants Officer. The Department shall observe one or more of the following disposition instructions.

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the Department and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 145.33 Federally-owned and exempt property.

(a) *Federally-owned property.* (1) Title to Federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of Federally-owned property in their custody to the Department. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the Department for further Federal agency utilization.

(2) If the Department has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the Department has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (I)) to donate research equipment to educational and non-profit organizations in accordance with Executive Order 12821, "Improving Mathematics and Science Education in Support of the National Education Goals.") Appropriate instructions shall be issued to the recipient by the Department.

(b) *Exempt property.* When statutory authority exists, the Department has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the Department considers appropriate. Such property is "exempt property." Should the Department not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

§ 145.34 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the Department. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-

sponsored activities, in the following order of priority: First, Activities sponsored by the Department which funded the original project, then activities sponsored by other the Department.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Department that financed the equipment; second preference shall be given to projects or programs sponsored by other the Department. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Department. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Department.

(f) The recipient's property management standards for equipment acquired with Federal funds and Federally-owned equipment shall include all of the following.

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Department for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Department.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of \$5,000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Department. The Department shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported to the General Services Administration by the Department to determine whether a requirement for the equipment exists in other Federal agencies. The Department shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the

equipment and reimburse the Department an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by the Department for such costs incurred in its disposition.

(4) The Department may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) The Department shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If the Department fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(iii) When the Department exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

§ 145.35 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of

compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 145.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Department reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(c) Unless waived by the Department, the Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award.

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the Department. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 145.34(g).

§ 145.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Agencies may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

Procurement Standards**§ 145.40 Purpose of procurement standards.**

Sections 145.41 through 145.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Department upon recipients, unless specifically required by Federal statute or executive order or approved by OMB. The standards in §§ 145.1 through 145.48 do not apply to small awards, except where imposed by Federal statute or Executive Order.

§ 145.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Department, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 145.42 Code of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for

situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 145.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 145.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that paragraphs (a)(1), (2) and (3) of this section apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following:

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the

range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procurement instruments used (e.g., fixed price contracts, cost reimbursement contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(d) Contracts shall be awarded only to responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration

shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by implementation of E.O.s 12549 and 12689, "Debarment and Suspension," implemented at 22 CFR 137.

(e) Recipients shall, on request, make available for the Department, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in the Department's implementation of this regulation.

(2) The procurement is expected to exceed the small purchase limitation and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase limitation, specifies a "brand name" product.

(4) The proposed award over the small purchase limitation is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase limitation.

§ 145.45 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 145.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase limitation shall include the following at a minimum:

- (a) basis for contractor selection,
- (b) justification for lack of competition when competitive bids or offers are not obtained, and
- (c) basis for award cost or price.

§ 145.47 Contract administration.

A system for contract administration shall be maintained to ensure contractor

conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 145.48 Contract clauses.

The recipient shall include, in addition to clauses to define a sound and complete agreement, the following clauses in all contracts. The following clauses shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase limitation shall contain contract clauses that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase limitation shall contain suitable clauses for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. The clauses shall describe conditions under which the contract may be terminated by the recipient for default of the contractor as well as conditions where the contract may be terminated for convenience because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, the Department may accept the bonding policy and requirements of the recipient, provided the Department has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price or other amount approved

by the Grants Officer. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(d) All negotiated contracts (except those for less than the small purchase limitation) awarded by recipients shall include a provision to the effect that the recipient, the Department, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the contract clauses in appendix A to this regulation, as applicable.

Reports and Records

§ 145.50 Purpose of reports and records.

Sections 145.51 through 145.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 145.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 145.26.

(b) The Department shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in § 145.51(f), performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The Department

may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following:

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify the Department of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) The Department may make site visits, as needed.

(h) The Department shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 145.52 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) SF-269 or SF-269A, Financial Status Report

(i) The Department shall require recipients to use the SF-269 or SF-269A to report the status of funds for all nonconstruction projects or programs, unless an equivalent form has been prescribed by the Grants Officer and approved by the OMB and the Office of the Procurement Executive (A/OPE), e.g., Form JF-61 for the Office of Overseas Schools (A/OPR/OS). The Department may also have the option of

not requiring the SF-269 or SF-269A when the SF-270, Request for Advance or Reimbursement, or SF-272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF-269 or SF-269A shall be required at the completion of the project when the SF-270 is used only for advances.

(ii) The Grants Officer shall prescribe whether the report shall be on a cash or accrual basis. If the Department requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) The Department shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) The Department shall require recipients to submit the SF-269 or SF-269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the Department upon request of the recipient.

(2) SF-272, Report of Federal Cash Transactions

(i) When funds are advanced to recipients the Department shall require each recipient to submit the SF-272 and, when necessary, its continuation sheet, SF-272a. The Department shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) The Department may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(iii) When practical and deemed necessary, the Department may require recipients to report in the "Remarks" section the amount of cash advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF-272 15 calendar days following the end of each quarter.

The Department may require a monthly report from those recipients receiving advances totaling \$1 million or more per year.

(v) The Grants Officer may waive the requirement for submission of the SF-272 for any one of the following reasons:

(A) When monthly advances do not exceed \$25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in the Grants Officer's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or

(C) When the electronic payment mechanisms provide adequate data.

(b) When the Department needs additional information or more frequent reports, the following shall be observed:

(1) When additional information is needed to comply with legislative requirements, the Department shall issue instructions to require recipients to submit such information under the "Remarks" section of the reports.

(2) When the Department determines that a recipient's accounting system does not meet the standards in § 145.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. The Department, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) The Grants Officer may "shade out" any line item on any report if not necessary.

(4) The Department may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) The Department may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

§ 145.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. The Department shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the Department. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the Department, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in § 145.53(g).

(c) Copies of original records may be substituted for the original records if authorized by the Department.

(d) The Department shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, the Department may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The Department, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no Department shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the Department can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Department.

(g) Indirect cost rate proposals, cost allocations plans, etc. Paragraphs (g)(1) and (g)(2) apply to the following types of documents, and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer

usage chargeback rates or composite fringe benefit rates).

(1) If submitted for negotiation. If the recipient submits to the Department or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) If not submitted for negotiation. If the recipient is not required to submit to the Department or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Termination and Enforcement

§ 145.60 Purpose of termination and enforcement.

Sections 145.61 and 145.62 set forth uniform suspension, termination and enforcement procedures.

§ 145.61 Termination.

(a) Awards may be terminated in whole or in part only if paragraphs (a) (1), (2) or (3) of this section apply.

(1) By the Department, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the Department, with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient, upon sending to the Department written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Department determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a) (1) or (2).

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 145.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 145.62 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Department may, in addition to imposing any of the special conditions outlined in § 145.14, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the Department.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, the awarding agency shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if paragraphs (c) (1) and (2) of this section apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under Executive Orders 12549 and 12689 and the implementing regulations at 22 CFR part 137.

Subpart D—After-the-Award Requirements**§ 145.70 Purpose.**

Sections 145.71 through 145.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 145.71 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Grants Officer may approve extensions when requested by the recipient.

(b) Unless the Grants Officer authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award.

(c) The Department shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that the Department has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A-129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Department shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 145.31 through 145.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, the Department shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 145.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following:

(1) The right of the Department to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 145.26.

(4) Property management requirements in §§ 145.31 through 145.37.

(5) Records retention as required in § 145.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Department and the recipient, provided the responsibilities of the recipient referred to in § 145.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 145.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Department may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the Department shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, Federal Claims Collection Standards.

Appendix A to Part 145—Clauses for Contracts and Small Purchases Awarded by Recipient

All contracts and small purchases, awarded by a recipient who is subject to this regulation, shall contain the following clauses, as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a clause requiring compliance with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. *Copeland "Anti-Kickback" Act* (18 U.S.C. 874 and 40 U.S.C. 276c)—All contracts and subgrants in excess of \$2000 for construction or repair awarded by recipients and subrecipients shall include a clause for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient

shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Department.

3. *Davis-Bacon Act, as amended* (40 U.S.C. 276a to a-7)—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a clause for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Department.

4. *Contract Work Hours and Safety Standards Act* (40 U.S.C. 327-333)—Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a clause for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any

implementing regulations issued by the Department.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.)*, as amended—Contracts and subgrants of amounts in excess of \$100,000 shall contain a clause that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Department and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (Executive Orders 12549 and 12689)*—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractors with awards that exceed the small purchase limitation shall provide the required certification regarding its exclusion status and that of its principal employees.

[FR Doc. 94-9181 Filed 4-19-94; 8:45 am]

BILLING CODE 4710-24-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8534]

RIN 1545-AS55

Real Estate Mortgage Investment Conduits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the qualification of an interest as a regular

interest in a real estate mortgage investment conduit, or REMIC. This action is necessary because of changes to the applicable tax law made by the Tax Reform Act of 1986 and by the Technical and Miscellaneous Revenue Act of 1988. The temporary regulations provide guidance to REMIC sponsors and investors. A portion of the text of these temporary regulations also serves as the partial text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the *Federal Register*.

DATES: These regulations are effective April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Carol A. Schwartz, (202) 622-3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document modifies income tax regulations (26 CFR part 1) under section 860G of the Internal Revenue Code (Code), published in the *Federal Register* on December 24, 1992, (57 FR 61293). Section 671 of the Tax Reform Act of 1986 (the 1986 Act), Public Law 99-514, 100 Stat. 2308, added sections 860A through 860G and amended other sections of the Code to provide rules relating to REMICs. Section 1006(t) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), Public Law 100-647, 102 Stat. 3419, amended section 671 of the 1986 Act. These provisions generally take effect, under section 675(a) of the 1986 Act, as amended by section 1006(w)(1) of TAMRA, on January 1, 1987.

Explanation of Provisions

For an entity to qualify as a REMIC, every interest in the entity must be a residual interest or a regular interest. The term "regular interest" is defined in section 860G(a)(1). Section 860G(a)(1)(B) requires that any interest payments on a regular interest be based on a fixed rate, or on a variable rate as provided in regulations. Interest payments on a regular interest may also consist of a specified portion of the interest payments on qualified mortgages held by a REMIC, provided the specified portion does not vary while the regular interest is outstanding.

Current § 1.860G-1(a)(3) identifies the variable rates that are permitted under section 860G(a)(1)(B). These include "a rate that is a qualifying variable rate for purposes of sections 1271 through 1275 and the related regulations." Section 1.860G-1(a)(3)(i).

Notice 93-11, 1993-1 C.B. 298, which interprets § 1.860G-1(a)(3)(i), explains

the meaning of "qualifying variable rate" by reference to proposed regulations under section 1275 that were published in the *Federal Register* on December 22, 1992 (57 FR 60750). Under the notice, a "qualifying variable rate" is a qualified floating rate (as defined in proposed § 1.1275-5(b)(1)) set at a current value (as defined in proposed § 1.1275-5(a)(4)). The regulations under section 1275 were revised and published in their final form in the *Federal Register* on February 2, 1994 (59 FR 4799). Those regulations became effective on April 14, 1994. Taxpayers could rely on Notice 93-11 until that date.

The temporary regulations contained in this document supersede current § 1.860G-1(a)(3)(i) to conform with the final regulations under section 1275. Under the temporary regulations, a variable rate includes a qualified floating rate as defined in § 1.1275-5(b)(1) (without the application of paragraphs (b)(2) and (3) of that section, concerning the use of caps, floors, governors, and certain multiples) set at a current value.

The temporary regulations are generally effective for obligations issued on or after April 4, 1994. The temporary regulations will not apply, however, to certain obligations priced before April 4, 1994, and transferred on or before June 1, 1994.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Carol A. Schwartz and Marshall Feiring, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.860G-1T also issued under 26 U.S.C. 860G(a)(1)(B)(i) and (e).

Par. 2. Section 1.860G-1T is added to read as follows:

§ 1.860G-1T Regular interests bearing interest at a rate based on a current interest rate (temporary).

(a) *Rate based on a current interest rate.* A qualified floating rate as defined in § 1.1275-5(b)(1) (but without the application of paragraph (b)(2) or (3) of that section) set at a current value, as defined in § 1.1275-5(a)(4), is a variable rate. In addition, a rate equal to the highest, lowest, or average of two or more qualified floating rates is a variable rate. For example, a rate based on the average cost of funds of one or more financial institutions is a variable rate.

(b) *Effect on § 1.860G-1.* All references in § 1.860G-1 to paragraph (a)(3)(i) must be read as references to paragraph (a) of this section.

(c) *Effective date—(1) In general.* This section is effective April 4, 1994.

(2) *Rate based on current interest rate.* Paragraphs (a) and (b) of this section apply to obligations intended to qualify as regular interests that are issued on or after April 4, 1994, unless the obligations are described in paragraph (c)(4) of this section.

(3) *Rate based on index.* Section 1.860G-1(a)(3)(i) (as contained in 26 CFR part 1 revised as of April 1, 1994) does not apply to obligations intended to qualify as regular interests that are issued on or after April 4, 1994, unless the obligations are described in paragraph (c)(4) of this section.

(4) *Transition obligations.* Obligations are described in this paragraph (c)(4) if—

(i) The terms of the obligations and the prices at which the obligations will be offered are fixed before April 4, 1994; and

(ii) On or before June 1, 1994, a substantial portion of the obligations will be transferred, with the terms and at the prices that are fixed before April 4, 1994, to investors who are unrelated

to the REMIC's sponsor at the time of the transfer.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: April 8, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94-9548 Filed 4-15-94; 2:05 pm]

BILLING CODE 4830-01-U

26 CFR Parts 1 and 15a

[TD 8535]

RIN 1545-AQ48

Like-kind Exchanges of Property—Coordination With Section 453

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final income tax regulations under section 1031(a)(3) of the Internal Revenue Code of 1986 relating to the coordination of deferred like-kind exchanges described in section 1031(a)(3) with the installment sale rules of section 453. The final regulations affect taxpayers who engage in certain like-kind exchanges of property under section 1031.

DATES: These regulations are effective April 20, 1994.

For dates of applicability, see §§ 1.1031(b)-2(d) and 1.1031(k)-1(j)(2) of the regulations.

FOR FURTHER INFORMATION CONTACT: Christopher F. Kane at (202) 622-4950, not a toll-free call.

SUPPLEMENTARY INFORMATION:**Background**

On May 1, 1991, the IRS published in the *Federal Register* (56 FR 19933) final regulations under section 1031(a)(3) of the Internal Revenue Code relating to deferred like-kind exchanges. Section 1.1031(k)-1(j)(2) of the regulations, relating to the coordination of section 1031(a)(3) with the installment sale provisions of section 453, is reserved. On November 2, 1992, the IRS published a notice of proposed rulemaking in the *Federal Register* (57 FR 49432) coordinating section 1031(a)(3) with the installment sale provisions of section 453. After consideration of the written comments received regarding the proposed regulations, the regulations are adopted as amended by this Treasury decision. This Treasury decision amends § 1.1031(b)-2 of 26 CFR part 1, Income Tax Regulations, adds the text of

§ 1.1031(k)-1(j)(2), and amends § 15a.453-1(b)(3)(i) of 26 CFR part 15a.

Technical Background

In a typical deferred exchange, the taxpayer may require the transferee to secure its promise to acquire replacement property with a cash funded escrow account or trust. Alternatively, the taxpayer may retain an intermediary to arrange for the transfer of replacement property to the taxpayer. Section 1.1031(k)-1(g) provides certain safe harbors that, if followed, ensure that these arrangements do not cause the transaction to be treated as a taxable sale rather than a deferred exchange for purposes of section 1031. Section 453(a) generally provides that income from an installment sale is taken into account under the installment method as payments are made. Section 15a.453-1(b)(3)(i) of the regulations provides that the receipt of an evidence of indebtedness that is secured directly or indirectly by cash or a cash equivalent is treated as the receipt of a payment. That section also provides that a payment includes amounts actually or constructively received under an installment obligation.

These final regulations provide rules that coordinate the safe harbor provisions of § 1.1031(k)-1(g) with the installment sale rules that determine when a taxpayer is in receipt of a payment under section 453 and § 15a.453-1(b)(3)(i).

Description of Provisions

The final regulations under § 1.1031(k)-1(g) (3) and (4) provide certain safe harbors under which taxpayers are treated as not being in actual or constructive receipt of money or other property held in a qualified escrow account, qualified trust, or by a qualified intermediary. These final regulations generally adopt the same safe harbors for the purpose of determining whether a taxpayer is in receipt of payment under section 453 and § 15a.453-1(b)(3)(i) if, at the beginning of the exchange period, the taxpayer has a bona fide intent to enter into a deferred exchange. The qualified escrow account, qualified trust, or qualified intermediary is disregarded for purposes of section 453 and § 15a.453-1(b)(3)(i) until the earlier of (a) the time the safe harbor would otherwise cease to apply for purposes of section 1031 (e.g., when the taxpayer has the immediate right to receive the funds held in the qualified escrow account), or (b) the end of the exchange period. Thus, subject to the other requirements of sections 453 and 453A and the related regulations,

taxpayers who use the safe harbors of the existing 1031 regulations and meet the requirements of these final regulations will be entitled to report gain recognized on the deferred exchange under the installment method.

Several commentators requested that the bona fide intent requirement be clarified by providing either examples or presumptions. Whether a particular taxpayer has a bona fide intent to enter into a deferred exchange is determined on the basis of all relevant facts and circumstances. Because the presumptions suggested by commentators would emphasize certain factors that in many cases should not be determinative, the final regulations do not contain rules setting forth presumptions. However, the final regulations clarify that a taxpayer will be treated as having a bona fide intent only if it is reasonable to believe, based on all the facts and circumstances as of the beginning of the exchange period, that like-kind replacement property will be acquired before the end of the exchange period. In addition, two examples have been added to the final regulations in which the bona fide intent requirement is determined to have been satisfied. These examples are intended to be illustrative only, and do not represent either the minimum steps required to establish bona fide intent or safe harbors pursuant to which a bona fide intent will in other contexts be assumed to exist.

The regulations provide a special rule for deferred exchanges involving qualified intermediaries. Under this rule, a taxpayer in receipt of an evidence of indebtedness of the qualified intermediary's transferee is treated as receiving an evidence of indebtedness of the transferee of the relinquished property, even though these regulations generally treat the qualified intermediary as having acquired and transferred the relinquished property for other purposes. Therefore, for purposes of section 453 and § 15a.453-1(b)(3)(i), the receipt by the taxpayer of such an evidence of indebtedness is treated as the receipt of an evidence of indebtedness of the person acquiring the relinquished property from the taxpayer and is not considered a payment under section 453.

One commentator was concerned that the treatment provided by the special rule terminates at the end of the exchange period even if the note remains outstanding. The final regulations make clear that this rule applies beyond the end of the exchange period. Another commentator suggested that the special rule that treats

indebtedness of the qualified intermediary's transferee as indebtedness of the person acquiring relinquished property from the taxpayer for purposes of section 453 and § 15a.453-1(b)(3)(i) should also apply to simultaneous exchanges under § 1.1031(b)-2. This comment has been adopted, as reflected in amendments to § 1.1031(b)-2.

Another commentator recommended that the regulations provide that the distribution of an installment note to the taxpayer at any time by a qualified intermediary would not terminate the applicability of the qualified intermediary safe harbor. The Internal Revenue Service and the Treasury do not believe a special exception to the limitations contained in § 1.1031(k)-1(g)(4) (ii) and (vi) (relating to the taxpayer's right to receive or otherwise obtain the benefits of money or other property held by a qualified intermediary) should be provided for installment notes. Rather, § 1.1031(k)-1(g)(4)(vii) provides sufficient flexibility by permitting the receipt of money or other property (including an installment note) by the taxpayer directly from a transferee without affecting the applicability of the qualified intermediary safe harbor. Therefore, this comment has not been adopted.

Another commentator suggested that certain interest payments made on the installment note during the exchange period be treated as fee income to the qualified intermediary and not as interest income to the taxpayer. Section 1.1031(k)-1(h)(2) specifies that interest payments received by the taxpayer, whether received in cash or property (including like-kind property), are to be treated as income to the taxpayer. The determination of whether interest payments retained by a qualified intermediary should be treated as received by the taxpayer, and thereby represent income to the taxpayer, is beyond the scope of this regulation and may be the subject of future guidance.

One commentator requested that the regulations address the timing of gain recognition in deferred exchanges involving assumptions of liabilities. The Internal Revenue Service and the Treasury are currently studying the circumstances under which, and the extent to which, gain attributable to assumptions of liabilities in like-kind exchanges (including simultaneous exchanges) should be eligible for deferral under the installment method. Among other things, this process will include an examination of the rules proposed under section 453(f)(6) in 1984. Accordingly, this final regulation does not address these issues.

Two commentators requested that the regulations consider issues relating to the timing of receipt of income after the end of the exchange period in cases where the delivery of money or other property is delayed due to events such as breach of contract or bankruptcy. Because section 1031(a)(3) requires deferred exchanges to be completed by the end of the exchange period, the safe harbors from the constructive receipt rules provided by § 1.1031(k)-1(g) (3) and (4) have no application after that period. Whether a taxpayer is in receipt of money or other property held in a qualified escrow account or qualified trust or by a qualified intermediary after the end of the exchange period is determined under general principles of federal income tax law. Therefore, the final regulations do not provide specific guidance regarding the timing of receipt of income where delivery of the money or other property held in a qualified escrow account or a qualified trust, or by a qualified intermediary is delayed beyond the end of the exchange period.

Several additional comments were received pertaining to issues that may arise when an installment note is used in a deferred like-kind exchange. Commentators suggested that guidance be provided on the tax consequences of making the installment note payable to a qualified intermediary. Commentators also wanted to know the consequences of a qualified intermediary's disposition of a note to a third party during the exchange period. Commentators requested guidance on the treatment of principal payments made on an installment note during the exchange period. One commentator requested guidance on the tax consequences of a reversion to the transferee of cash held in a qualified escrow account or qualified trust followed by the transferee's issuance of an installment note to the taxpayer at the end of the exchange period. Commentators also suggested that the final regulations address the treatment of issues arising from deferred exchanges of multiple assets.

The issues raised by these comments are broader than the scope of these regulations. Resolution of these issues would affect not only deferred like-kind exchanges spanning more than one tax year, but also such exchanges taking place within one tax year. In addition, these issues may also involve the character of income rather than the timing of the receipt of income. Therefore, the final regulations do not address these comments. However, the Internal Revenue Service will take these issues into consideration in issuing further guidance in this area.

Finally, under these regulations, taxpayers may choose to apply the safe harbors retroactively to transfers of property occurring on or after May 16, 1990. However, if taxpayers reported gain that qualifies for installment method reporting under these regulations in the year they transferred the relinquished property, they in effect elected out of the installment method. In the preamble to the proposed regulations, the Internal Revenue Service requested comments on whether the Service should publish a revenue procedure providing simplified procedures under which those taxpayers who elected out of the installment method could use the installment method in reporting gain on those transactions. Because commentators expressed only minimal interest in this revenue procedure, the Service will not issue such a revenue procedure or similar guidance.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking published in the Federal Register on November 2, 1992 (57 FR 49432) was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Christopher F. Kane of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Parts 1 and 15a

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendment to the Regulations

Accordingly, 26 CFR parts 1 and 15a are amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1031(b)-2 is amended as follows:

1. Paragraph (b) is revised.
2. Paragraphs (c) and (d) are added.
3. The added and revised provisions read as follows:

§ 1.1031(b)-(2) Safe harbor for qualified intermediaries.

(b) In the case of simultaneous exchanges of like-kind properties involving a qualified intermediary (as defined in § 1.1031(k)-1(g)(4)(iii)), the receipt by the taxpayer of an evidence of indebtedness of the transferee of the qualified intermediary is treated as the receipt of an evidence of indebtedness of the person acquiring property from the taxpayer for purposes of section 453 and § 15a.453-1(b)(3)(i) of this chapter.

(c) Paragraph (a) of this section applies to transfers of property made by taxpayers on or after June 10, 1991.

(d) Paragraph (b) of this section applies to transfers of property made by taxpayers on or after April 20, 1994. A taxpayer may choose to apply paragraph (b) of this section to transfers of property made on or after June 10, 1991.

Par. 3. In § 1.1031(k)-1, the text of paragraph (j)(2) is added to read as follows:

§ 1.1031(k)-1 Treatment of deferred exchanges.

(j) * * *

(2) *Coordination with section 453—(i) Qualified escrow accounts and qualified trusts.* Subject to the limitations of paragraphs (j)(2) (iv) and (v) of this section, in the case of a taxpayer's transfer of relinquished property in which the obligation of the taxpayer's transferee to transfer replacement property to the taxpayer is or may be secured by cash or a cash equivalent, the determination of whether the taxpayer has received a payment for purposes of section 453 and § 15a.453-1(b)(3)(i) of this chapter will be made without regard to the fact that the obligation is or may be so secured if the cash or cash equivalent is held in a qualified escrow account or a qualified trust. This paragraph (j)(2)(i) ceases to apply at the earlier of—

- (A) The time described in paragraph (g)(3)(iv) of this section; or
- (B) The end of the exchange period.
- (ii) *Qualified intermediaries.* Subject to the limitations of paragraphs (j)(2) (iv)

and (v) of this section, in the case of a taxpayer's transfer of relinquished property involving a qualified intermediary, the determination of whether the taxpayer has received a payment for purposes of section 453 and § 15a.453-1(b)(3)(i) of this chapter is made as if the qualified intermediary is not the agent of the taxpayer. For purposes of this paragraph (j)(2)(ii), a person who otherwise satisfies the definition of a qualified intermediary is treated as a qualified intermediary even though that person ultimately fails to acquire identified replacement property and transfer it to the taxpayer. This paragraph (j)(2)(ii) ceases to apply at the earlier of—

(A) The time described in paragraph (g)(4)(vi) of this section; or

(B) The end of the exchange period.

(iii) *Transferee indebtedness.* In the case of a transaction described in paragraph (j)(2)(ii) of this section, the receipt by the taxpayer of an evidence of indebtedness of the transferee of the qualified intermediary is treated as the receipt of an evidence of indebtedness of the person acquiring property from the taxpayer for purposes of section 453 and § 15a.453-1(b)(3)(i) of this chapter.

(iv) *Bona fide intent requirement.* The provisions of paragraphs (j)(2) (i) and (ii) of this section do not apply unless the taxpayer has a bona fide intent to enter into a deferred exchange at the beginning of the exchange period. A taxpayer will be treated as having a bona fide intent only if it is reasonable to believe, based on all the facts and circumstances as of the beginning of the exchange period, that like-kind replacement property will be acquired before the end of the exchange period.

(v) *Disqualified property.* The provisions of paragraphs (j)(2) (i) and (ii) of this section do not apply if the relinquished property is disqualified property. For purposes of this paragraph (j)(2), *disqualified property* means property that is not held for productive use in a trade or business or for investment or is property described in section 1031(a)(2).

(vi) *Examples.* This paragraph (j)(2) may be illustrated by the following examples. Unless otherwise provided in an example, the following facts are assumed: B is a calendar year taxpayer who agrees to enter into a deferred exchange. Pursuant to the agreement, B is to transfer real property X. Real property X, which has been held by B for investment, is unencumbered and has a fair market value of \$100,000 at the time of transfer. B's adjusted basis in real property X at that time is \$60,000. B identifies a single like-kind replacement property before the end of

the identification period, and B receives the replacement property before the end of the exchange period. The transaction qualifies as a like-kind exchange under section 1031.

Example 1. (i) On September 22, 1994, B transfers real property X to C and C agrees to acquire like-kind property and deliver it to B. On that date B has a bona fide intent to enter into a deferred exchange. C's obligation, which is not payable on demand or readily tradable, is secured by \$100,000 in cash. The \$100,000 is deposited by C in an escrow account that is a qualified escrow account under paragraph (g)(3) of this section. The escrow agreement provides that B has no rights to receive, pledge, borrow, or otherwise obtain the benefits of the cash deposited in the escrow account until the earlier of the date the replacement property is delivered to B or the end of the exchange period. On March 11, 1995, C acquires replacement property having a fair market value of \$80,000 and delivers the replacement property to B. The \$20,000 in cash remaining in the qualified escrow account is distributed to B at that time.

(ii) Under section 1031(b), B recognizes gain to the extent of the \$20,000 in cash that B receives in the exchange. Under paragraph (j)(2)(i) of this section, the qualified escrow account is disregarded for purposes of section 453 and § 15a.453-1(b)(3)(i) of this chapter in determining whether B is in receipt of payment. Accordingly, B's receipt of C's obligation on September 22, 1994, does not constitute a payment. Instead, B is treated as receiving payment on March 11, 1995, on receipt of the \$20,000 in cash from the qualified escrow account. Subject to the other requirements of sections 453 and 453A, B may report the \$20,000 gain in 1995 under the installment method. See section 453(f)(6) for special rules for determining total contract price and gross profit in the case of an exchange described in section 1031(b).

Example 2. (i) D offers to purchase real property X but is unwilling to participate in a like-kind exchange. B thus enters into an exchange agreement with C whereby B retains C to facilitate an exchange with respect to real property X. On September 22, 1994, pursuant to the agreement, B transfers real property X to C who transfers it to D for \$100,000 in cash. On that date B has a bona fide intent to enter into a deferred exchange. C is a qualified intermediary under paragraph (g)(4) of this section. The exchange agreement provides that B has no rights to receive, pledge, borrow, or otherwise obtain the benefits of the money held by C until the earlier of the date the replacement property is delivered to B or the end of the exchange period. On March 11, 1995, C acquires replacement property having a fair market value of \$80,000 and delivers it, along with the remaining \$20,000 from the transfer of real property X to B.

(ii) Under section 1031(b), B recognizes gain to the extent of the \$20,000 cash B receives in the exchange. Under paragraph (j)(2)(ii) of this section, any agency relationship between B and C is disregarded for purposes of section 453 and § 15a.453-1(b)(3)(i) of this chapter in determining

whether B is in receipt of payment. Accordingly, B is not treated as having received payment on September 22, 1994, on C's receipt of payment from D for the relinquished property. Instead, B is treated as receiving payment on March 11, 1995, on receipt of the \$20,000 in cash from C. Subject to the other requirements of sections 453 and 453A, B may report the \$20,000 gain in 1995 under the installment method.

Example 3. (i) D offers to purchase real property X but is unwilling to participate in a like-kind exchange. B enters into an exchange agreement with C whereby B retains C as a qualified intermediary to facilitate an exchange with respect to real property X. On December 1, 1994, pursuant to the agreement, B transfers real property X to C who transfers it to D for \$100,000 in cash. On that date B has a bona fide intent to enter into a deferred exchange. The exchange agreement provides that B has no rights to receive, pledge, borrow, or otherwise obtain the benefits of the cash held by C until the earliest of the end of the identification period if B has not identified replacement property, the date the replacement property is delivered to B, or the end of the exchange period. Although B has a bona fide intent to enter into a deferred exchange at the beginning of the exchange period, B does not identify or acquire any replacement property. In 1995, at the end of the identification period, C delivers the entire \$100,000 from the sale of real property X to B.

(ii) Under section 1001, B realizes gain to the extent of the amount realized (\$100,000) over the adjusted basis in real property X (\$60,000), or \$40,000. Because B has a bona fide intent at the beginning of the exchange period to enter into a deferred exchange, paragraph (j)(2)(iv) of this section does not make paragraph (j)(2)(ii) of this section inapplicable even though B fails to acquire replacement property. Further, under paragraph (j)(2)(ii) of this section, C is a qualified intermediary even though C does not acquire and transfer replacement property to B. Thus, any agency relationship between B and C is disregarded for purposes of section 453 and § 15a.453-1(b)(3)(i) of this chapter in determining whether B is in receipt of payment. Accordingly, B is not treated as having received payment on December 1, 1994, on C's receipt of payment from D for the relinquished property. Instead, B is treated as receiving payment at the end of the identification period in 1995 on receipt of the \$100,000 in cash from C. Subject to the other requirements of sections 453 and 453A, B may report the \$40,000 gain in 1995 under the installment method.

Example 4. (i) D offers to purchase real property X but is unwilling to participate in a like-kind exchange. B thus enters into an exchange agreement with C whereby B retains C to facilitate an exchange with respect to real property X. C is a qualified intermediary under paragraph (g)(4) of this section. On September 22, 1994, pursuant to the agreement, B transfers real property X to C who then transfers it to D for \$80,000 in cash and D's 10-year installment obligation for \$20,000. On that date B has a bona fide intent to enter into a deferred exchange. The

exchange agreement provides that B has no rights to receive, pledge, borrow, or otherwise obtain the benefits of the money or other property held by C until the earlier of the date the replacement property is delivered to B or the end of the exchange period. D's obligation bears adequate stated interest and is not payable on demand or readily tradable. On March 11, 1995, C acquires replacement property having a fair market value of \$80,000 and delivers it, along with the \$20,000 installment obligation, to B.

(ii) Under section 1031(b), \$20,000 of B's gain (i.e., the amount of the installment obligation B receives in the exchange) does not qualify for nonrecognition under section 1031(a). Under paragraphs (j)(2)(ii) and (iii) of this section, B's receipt of D's obligation is treated as the receipt of an obligation of the person acquiring the property for purposes of section 453 and § 15a.453-1(b)(3)(i) of this chapter in determining whether B is in receipt of payment. Accordingly, B's receipt of the obligation is not treated as a payment. Subject to the other requirements of sections 453 and 453A, B may report the \$20,000 gain under the installment method on receiving payments from D on the obligation.

Example 5. (i) B is a corporation that has held real property X to expand its manufacturing operations. However, at a meeting in November 1994, B's directors decide that real property X is not suitable for the planned expansion, and authorize a like-kind exchange of this property for property that would be suitable for the planned expansion. B enters into an exchange agreement with C whereby B retains C as a qualified intermediary to facilitate an exchange with respect to real property X. On November 28, 1994, pursuant to the agreement, B transfers real property X to C, who then transfers it to D for \$100,000 in cash. The exchange agreement does not include any limitations or conditions that make it unreasonable to believe that like-kind replacement property will be acquired before the end of the exchange period. The exchange agreement provides that B has no rights to receive, pledge, borrow, or otherwise obtain the benefits of the cash held by C until the earliest of the end of the identification period, if B has not identified replacement property, the date the replacement property is delivered to B, or the end of the exchange period. In early January 1995, B's directors meet and decide that it is not feasible to proceed with the planned expansion due to a business downturn reflected in B's preliminary financial reports for the last quarter of 1994. Thus, B's directors instruct C to stop seeking replacement property. C delivers the \$100,000 cash to B on January 12, 1995, at the end of the identification period. Both the decision to exchange real property X for other property and the decision to cease seeking replacement property because of B's business downturn are recorded in the minutes of the directors' meetings. There are no other facts or circumstances that would indicate whether, on November 28, 1994, B had a bona fide intent to enter into a deferred like-kind exchange.

(ii) Under section 1001, B realizes gain to the extent of the amount realized (\$100,000)

over the adjusted basis of real property X (\$60,000), or \$40,000. The directors' authorization of a like-kind exchange, the terms of the exchange agreement with C, and the absence of other relevant facts, indicate that B had a bona fide intent at the beginning of the exchange period to enter into a deferred like-kind exchange. Thus, paragraph (j)(2)(iv) of this section does not make paragraph (j)(2)(ii) of this section inapplicable, even though B fails to acquire replacement property. Further, under paragraph (j)(2)(ii) of this section, C is a qualified intermediary, even though C does not transfer replacement property to B. Thus, any agency relationship between B and C is disregarded for purposes of section 453 and § 15a.453-1(b)(3)(i) of this chapter in determining whether B is in receipt of payment. Accordingly, B is not treated as having received payment until January 12, 1995, on receipt of the \$100,000 cash from C. Subject to the other requirements of sections 453 and 453A, B may report the \$40,000 gain in 1995 under the installment method.

Example 6. (i) B has held real property X for use in its trade or business, but decides to transfer that property because it is no longer suitable for B's planned expansion of its commercial enterprise. B and D agree to enter into a deferred exchange. Pursuant to their agreement, B transfers real property X to D on September 22, 1994, and D deposits \$100,000 cash in a qualified escrow account as security for D's obligation under the agreement to transfer replacement property to B before the end of the exchange period. D's obligation is not payable on demand or readily tradable. The agreement provides that B is not required to accept any property that is not zoned for commercial use. Before the end of the identification period, B identifies real properties J, K, and L, all zoned for residential use, as replacement properties. Any one of these properties, rezoned for commercial use, would be suitable for B's planned expansion. In recent years, the zoning board with jurisdiction over properties J, K, and L has rezoned similar properties for commercial use. The escrow agreement provides that B has no rights to receive, pledge, borrow, or otherwise obtain the benefits of the money in the escrow account until the earlier of the time that the zoning board determines, after the end of the identification period, that it will not rezone the properties for commercial use or the end of the exchange period. On January 5, 1995, the zoning board decides that none of the properties will be rezoned for commercial use. Pursuant to the exchange agreement, B receives the \$100,000 cash from the escrow on January 5, 1995. There are no other facts or circumstances that would indicate whether, on September 22, 1994, B had a bona fide intent to enter into a deferred like-kind exchange.

(ii) Under section 1001, B realizes gain to the extent of the amount realized (\$100,000) over the adjusted basis of real property X (\$60,000), or \$40,000. The terms of the exchange agreement with D, the identification of properties J, K, and L, the efforts to have those properties rezoned for commercial purposes, and the absence of

other relevant facts, indicate that B had a bona fide intent at the beginning of the exchange period to enter into a deferred exchange. Moreover, the limitations imposed in the exchange agreement on acceptable replacement property do not make it unreasonable to believe that like-kind replacement property would be acquired before the end of the exchange period. Therefore, paragraph (j)(2)(iv) of this section does not make paragraph (j)(2)(i) of this section inapplicable even though B fails to acquire replacement property. Thus, for purposes of section 453 and § 15a.453-1(b)(3)(i) of this chapter, the qualified escrow account is disregarded in determining whether B is in receipt of payment. Accordingly, B is not treated as having received payment on September 22, 1994, on D's deposit of the \$100,000 cash into the qualified escrow account. Instead, B is treated as receiving payment on January 5, 1995. Subject to the other requirements of sections 453 and 453A, B may report the \$40,000 gain in 1995 under the installment method.

(vii) **Effective date.** This paragraph (j)(2) is effective for transfers of property occurring on or after April 20, 1994. Taxpayers may apply this paragraph (j)(2) to transfers of property occurring before April 20, 1994, but on or after June 10, 1991, if those transfers otherwise meet the requirements of § 1.1031(k)-1. In addition, taxpayers may apply this paragraph (j)(2) to transfers of property occurring before June 10, 1991, but on or after May 16, 1990, if those transfers otherwise meet the requirements of § 1.1031(k)-1 or follow the guidance of IA-237-84 published in 1990-1, C.B. See § 601.601(d)(2)(ii)(b) of this chapter.

PART 15a—TEMPORARY INCOME TAX REGULATIONS UNDER THE INSTALLMENT SALES REVISION ACT

Par. 4. The authority citation for part 15a is revised to read as follows:

Authority: 26 U.S.C. 453(i) and 7805.

Par. 5. In § 15a.453-1, paragraph (b)(3)(i) is amended by adding a sentence, after the current first sentence, after the current third sentence, and after the current fourth sentence, respectively, to read as follows:

§ 15a.453-1 Installment method reporting for sales of real property and casual sales of personal property.

* * * * *

(b) * * *

(3) **Payment—(i) In general.** * * * For special rules regarding the receipt of an evidence of indebtedness of a transferee of a qualified intermediary, see §§ 1.1031(b)-2(b) and 1.1031(k)-1(j)(2)(iii) of this chapter. * * * For a special rule regarding a transfer of property to a qualified intermediary

followed by the sale of such property by the qualified intermediary, see § 1.1031(k)-1(j)(2)(ii) of this chapter.

* * * For a special rule regarding a transfer of property in exchange for an obligation that is secured by cash or a cash equivalent held in a qualified escrow account or a qualified trust, see § 1.1031(k)-1(j)(2)(i) of this chapter.

* * *

Approved: March 16, 1994.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94-9557 Filed 4-19-94; 8:45 am]

BILLING CODE 4830-01-U

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

706 Agencies; Prince William County (VA) Human Rights Commission

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations designating certain State and local fair employment practices agencies (706 Agencies) so that they may handle employment discrimination charges within their jurisdictions. Publication of this amendment effectuates the designation of the Prince William County (VA) Human Rights Commission as a 706 Agency.

EFFECTIVE DATE: April 20, 1994.

FOR FURTHER INFORMATION CONTACT: Boyce Nolan, Equal Employment Opportunity Commission, Office of Program Operations, Charge Resolution Review Program, 1801 L Street NW., Washington, DC 20507, Telephone (202) 663-4856.

SUPPLEMENTARY INFORMATION:

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations.

Accordingly, title 29, chapter XIV, part 1601 of the Code of Federal Regulations is amended as follows:

PART 1601—PROCEDURAL REGULATIONS

1. The authority citation for part 1601 continues to read as follows:

Authority: 42 U.S.C. 2000e to 2000e-17; 42 U.S.C. 12111 to 12117.

2. Section 1601.74(a) is amended by adding in alphabetical order the following agency:

§ 1601.74 Designated and notice agencies.

(a) * * *

Prince William County (VA) Human Rights Commission

* * * * *

Signed at Washington, DC, this 15th day of April, 1994.

For the Commission.

James H. Troy,

Director, Office of Program Operations.

[FR Doc. 94-9481 Filed 4-19-94; 8:45 am]

BILLING CODE 6750-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL89-1-8199; FRL-4875-4]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On November 18, 1993, the State of Illinois submitted a State Implementation Plan (SIP) revision request to the United States Environmental Protection Agency (USEPA) in response to USEPA's September 22, 1993 proposed sulfur dioxide (SO₂) nonattainment designation for Alton Township, Madison County. This revision request, which limits the SO₂ emissions from the Laclede Steel Co. facility, is being approved because it corrects modeled ambient air quality noncompliance and comports with USEPA's requirements regarding Federal enforceability. Because USEPA considers this finding to be noncontroversial, final action is being taken without prior proposal. Also, as a consequence of the approval of the SIP revision request submitted by the State, the proposed nonattainment designation for Alton Township becomes moot.

DATES: This final rule will be effective June 20, 1994 unless notice is received by May 20, 1994 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the revision request and USEPA's analysis are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation

Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Rosanne M. Lindsay at (312) 353-1151 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Rosanne M. Lindsay at (312) 353-1151.
SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On November 18, 1993, the Illinois Environmental Protection Agency (IEPA) submitted a SIP revision request in response to USEPA's intention to designate Alton Township as nonattainment for sulfur dioxide (SO₂) (see 58 FR 67334, December 21, 1993). The submittal corrects modeled SIP deficiencies by limiting SO₂ emissions from the boilers and reheat furnaces at the Laclede Steel Co. facility (Laclede Steel), requiring them to use only natural gas and distillate oil. These restrictions on Laclede Steel, which include recordkeeping and reporting requirements, are incorporated into a federally enforceable State operating permit (FESOP) for Laclede Steel pursuant to the State FESOP program, approved by USEPA on December 17, 1992. The modeling and emission inventory included in the submittal demonstrate that the control measures at Laclede Steel address those SIP deficiencies, identified by USEPA, which led to USEPA's proposed nonattainment designation of Alton Township.

II. Analysis of State Submittal

The USEPA has undertaken its analysis of the revision request based on a review of the modeling, emission inventory, and the emission limitations for Laclede Steel.

A. Review of Modeling and Emission Inventory

Modeling consistent with USEPA guidance was performed with regard to Alton Township under a contract reviewed by USEPA. The current version of the Industrial Source Complex Short Term (ISCST) model was used with 5 years of representative meteorological data from St. Louis, Missouri. The attainment demonstration used a set of receptor arrays with resolution of 100 meters. The Alton area contains some portions of complex terrain. The ISCST model and the Complex-I model were evaluated for use

with the local terrain. ISCST was determined to provide the most conservative estimations, and was therefore used throughout the attainment demonstration for receptors at all terrain evaluations.

The modeling study initially included only the SO₂ emissions from the 8 SO₂-emitting facilities in Alton Township and the Union Electric Power Plant in Portage des Sioux Township, Missouri. The boilers which were included in the modeling were screened to determine the load which gave the worst emissions. All boilers were found to cause the greatest ambient impacts at maximum capacity, and were modeled accordingly. Background SO₂ concentrations were determined using ambient data from local air quality monitors correlated with hourly wind direction measurements.

It was determined that attainment of the SO₂ NAAQS could be demonstrated if a set of emission reductions at the Laclede Steel facility in Alton Township were in place. These emission reductions have been incorporated into the Laclede Steel facility FESOP. Once the attainment strategy for the Alton Township sources had been developed, the effect of the SO₂ emissions from three facilities located in adjacent Wood River Township, Illinois, was taken into account. The final model runs predicted that the combined emissions from Laclede Steel, with the applicable emission reductions in place, the other Alton area sources, and the Wood River sources would not violate the NAAQS.

B. Review of the Emission Limitations

The IEPA has satisfied the requirements for the submittal of a revision request through the issuance of an operating permit with federally enforceable conditions (Application No. 93070030). The permit was given public notice and was made available for public comment. The conditions of the permit limit emissions of sulfur dioxide from existing boilers and reheat furnaces at Laclede Steel by restricting fuel usage to natural gas and distillate fuel, only. These restrictions will ensure compliance with the NAAQS for the area. The permit also contains recordkeeping and reporting requirements for the equipment identified, the fuel received and burned at the facility, and any exceedance or violation of the requirements. The entire submittal, including modeling and emission inventory, has been reviewed against Federal air pollution control regulations, including the Clean Air Act, and conforms to the requirements for Federal enforceability.