

5224. The petitioner also requests relief from the provisions of §§ 91.111(a) and (b), 1.117(c), 1.119(c), and 91.209(a), which were previously requested and denied in Exemption No. 5224. In addition, the petitioner seeks relief from §§ 91.127(b) [91.126, 91.127] and 91.129(b) [91.129(c)]. The petitioner did not request to renew its exemption from § 91.127(c).

PARTIAL GRANT, August 15, 1994, Exemption No. 5224A

Docket No.: 27250.

Petitioner: Buttons, Ltd.

Sections of the FAR Affected: 14 CFR 91.861(a).

Description of Relief Sought/

Disposition: To allow assignment of a base level of "one" to Buttons, Ltd.'s Stage 2 Boeing 727-100, (Registration No. N7271P, Serial No. 18998) airplane.

GRANT, August 22, 1994, Exemption No. 5954

Docket No.: 27436.

Petitioner: Nationwide Advertising Service, Inc.

Sections of the FAR Affected: 14 CFR 91.865.

Description of Relief Sought/

Disposition: To allow assignment of a base level of "one" to Nationwide's Stage 2 BAC 1-11 Series 203AE, (Registration No. N583CC, Serial No. 015) airplane. [NOTE: Although relief was requested from § 91.865, the FAA has determined that the relief required is from § 91.861.]

GRANT, August 22, 1994, Exemption No. 5953

[FR Doc. 94-22619 Filed 9-12-94; 8:45 am]

BILLING CODE 4910-13-M

Civil Tiltrotor Development Advisory Committee; Aircraft Subcommittee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act Public Law (72-362); 5 U.S.C. (App. I), notice

is hereby given of a meeting of the Federal Aviation Administration (FAA) sponsored Civil Tiltrotor Development Advisory Committee (CTRDAC) Aircraft Subcommittee that will be held on September 28, 1994 at the Dallas/Fort Worth Regional Airport in the Flagship Suite opposite Gate 24 in Terminal 3E. The meeting will begin at 10:00 a.m. and conclude by 5:00 p.m.

The agenda for the first Aircraft Subcommittee meeting will include the following:

- (1) Review the Aircraft Subcommittee Work Plans and Schedule.
- (2) Review Subcommittee Assumptions.
- (3) Assign responsibilities for issues papers, report chapters, and other efforts.

Persons who plan to attend the meeting should notify Ms. Deborah Ogunshakin on 202-267-9451. Attendance is open to the interested public, but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting.

Members of the public may provide a written statement to the Subcommittee at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Deborah Ogunshakin at least three days prior to the meeting.

Issued in Washington, D.C., September 7, 1994.

Richard A. Weiss,

Designated Federal Official, Civil Tiltrotor Development, Advisory Committee.

[FR Doc. 94-22624 Filed 9-12-94; 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on September 14 in Room 600, 301 4th Street, S.W., Washington, D.C. from 9:45 a.m.-12:15 p.m.

The Commission will meet from 9:45-10:30 a.m. with Ambassador Richard Brown, Policy Coordinator for the Summit of the Americas Office, Department of State, and Mr. Alex Almasov, a public affairs officer with the Office to discuss Summit themes, objectives, and public diplomacy issues. From 10:30-11:15 a.m. the Commission will meet with Ms. Anne Sigmund, Director, Office of Eastern Europe and NIS Affairs to discuss public diplomacy issues and operations in the region. From 11:15 a.m.-12:15 p.m. the Commission will meet with Ambassador Jack Matlock, Institute on War and Peace Studies, Columbia University; Professor Jack Millar, Director, Institute of Eurasian and Russian Studies, The George Washington University; and Dr. Daniel Matuszewski, Executive Director, International Research and Exchanges Board; to discuss developments and public diplomacy in Russia and other New Independent States of the former Soviet Union.

FOR FURTHER INFORMATION CONTACT: Please call Betty Hayes, (202) 619-4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 94-22628 Filed 9-12-94; 8:45 am]

BILLING CODE 5230-01-M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 176

Tuesday, September 13, 1994

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

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, September 20, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 202 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94-22686 Filed 9-9-94; 11:29 am]

BILLING CODE 6351-01-M

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 10:00 a.m., Tuesday, September 20, 1994.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, D.C. 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Ex Parte No. MC-95 (Sub-No. 7), *Petition to Amend 49 CFR Part 1063—Adequacy of Intercity Motor Common Carrier Passenger Service.*

Docket No. 40745, *Adirondack Transit Lines, et al. v. Greyhound Lines, Inc.*, Docket No. 40745 (Sub-No. 1), *Adirondack Transit Lines, et al. v. Greyhound Lines, Inc.*, Docket No. 40891, *American Buslines, Inc. v. Greyhound Lines, Inc.*; and Docket No. 41090, *Adirondack Transit Lines, et al. v. Greyhound Lines, Inc.*

Finance Docket No. 32479, *Caddo Antoine and Little Missouri Railroad Company—Feeder Line Acquisition—Arkansas Midland Railroad Company Line Between Gurdon and Birds Mill, AR* and Finance Docket No. 31540, *Glenwood and Southern Railroad Company—Acquisition and Operation*

Exemption—Arkansas Midland Railroad Company.

Docket No. AB-3 (Sub-No. 103), *Missouri Pacific Railroad Company—Abandonment—In Douglas, Champaign and Vermilion Counties, IL (Westville and Jamaica Branches).*

Finance Docket No. 32374, *Los Angeles County Transportation Commission—Petition for Exemption—Acquisition From Union Pacific Railroad Company and Finance Docket No. 32375, Los Angeles County Transportation Commission—Trackage Rights Exemption—Union Pacific Railroad Company.*

CONTACT PERSONS FOR MORE

INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of Congressional and Press Services, Telephone: (202) 927-5350, TDD: (202) 927-5721.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94-22683 Filed 9-9-94; 11:28 am]

BILLING CODE 7035-01-P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Previously Held Emergency Meeting

TIME AND DATE: 4:15 p.m., September 8, 1994.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314-3428.

STATUS: Closed.

MATTER CONSIDERED:

1. Administrative Action under Sections 206 and 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

The Board voted unanimously that Agency business required that a meeting be held with less than the usual seven days advance notice and that it be closed to the public. Earlier announcement of this was not possible.

The Board voted unanimously to close the meeting under the exemptions stated above. General Counsel Robert Fenner certified that the meeting could be closed under those exemptions.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518-6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 94-22749 Filed 9-9-94; 2:14 pm]

BILLING CODE 7535-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 12, 19, 26, and October 3, 1994.

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

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 12

There are no meetings scheduled for the Week of September 12.

Week of September 19—Tentative

There are no meetings scheduled for the Week of September 19.

Week of September 26—Tentative

There are no meetings scheduled for the Week of September 26.

Week of October 3—Tentative

There are no meetings scheduled for the Week of October 3.

ADDITIONAL INFORMATION: By a vote of 3-0 on September 6, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Management Issues" (Closed—Ex. 2 and 6) be held on September 6, and on less than one week's notice to the public.

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

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

Dated: September 9, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94-22762 Filed 9-9-94; 2:47 pm]

BILLING CODE 7590-01-M

**PENNSYLVANIA AVENUE DEVELOPMENT
CORPORATION**

Board of Directors Meeting

ACTION: The Pennsylvania Avenue Development Corporation announces the date of their forthcoming meeting of the Board of Directors.

DATE: The meeting will be held Wednesday, September 28, 1994, at 10:00 a.m.

ADDRESS: The meeting will be held at the Pennsylvania Avenue Development Corporation, Suite 1220 North, 1331 Pennsylvania Avenue, N.W., Washington, D.C.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Dated: September 8, 1994.

Robert E. McCally,

General Counsel.

[FR Doc. 94-22770 Filed 9-9-94; 3:19 pm]

BILLING CODE 7639-01-M

Tuesday
September 13, 1994

Part II

**Department of
Housing and Urban
Development**

Office of the Secretary

24 CFR Part 84

**Uniform Administrative Requirements for
Grants and Agreements With Institutions
of Higher Education, Hospitals and Other
Non-Profit Organizations—Revised OMB
Circular A-110; Interim and Final Rule**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 84

[Docket No. R-94-1736; FR-3639-I-01]

RIN 2501-AB74

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations—Revised OMB Circular A-110

AGENCY: Office of the Secretary, HUD.

ACTION: Interim and final rule.

SUMMARY: Office of Management and Budget (OMB) Circular A-110 provides standards for obtaining consistency and uniformity among Federal agencies in the administration of grants and agreements with institutions of higher education, hospitals, and other non-profit organizations.

OMB issued Circular A-110 in 1976 and made a minor revision in February 1987. To update the Circular, OMB established an interagency task force to review the Circular. The task force solicited suggestions for changes to the Circular from university groups, non-profit organizations and other interested parties and compared, for consistency, the provisions of similar provisions applied to State and local governments. On November 29, 1993, OMB issued a revised circular which reflects the results of these efforts. This final rule adopts the revised circular as it pertains to HUD. However, this rule contains, in subpart E, special provisions relating to the use of lump sum grants. Therefore, subpart E will be treated as an interim rule, and the public is invited to submit comments on subpart E.

DATES: Effective date: October 13, 1994.

Comments due date: Comments on subpart E are due on November 14, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding subpart E of this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Aliceann B. Muller, Policy and Evaluation Division, Office of

Procurement and Contracts, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 5262, Washington, DC 20410. Telephone: (202) 708-0294; TDD: (202) 708-1112. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Office of Management and Budget (OMB) Circular A-110 provides standards for obtaining consistency and uniformity among Federal agencies in the administration of grants and agreements with institutions of higher education, hospitals, and other non-profit organizations.

OMB Circular A-110 was issued under the authority of 31 U.S.C. 503 (the Chief Financial Officers Act), 31 U.S.C. 1111, 41 U.S.C. 405 (the Office of Federal Procurement Policy Act), Reorganization Plan No. 2 of 1970, and E.O. 11541 ("Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President").

OMB issued Circular A-110 in 1976 and made a minor revision in February 1987. To update the circular, OMB established an interagency task force to review the circular. The task force solicited suggestions for changes to the circular from university groups, non-profit organizations and other interested parties and compared, for consistency, the provisions of similar provisions applied to State and local governments. On August 27, 1992, OMB published a notice in the *Federal Register*, at 57 FR 39018, requesting comments on proposed revisions to OMB Circular A-110. Interested parties were invited to submit comments. OMB received over 200 comments from Federal agencies, non-profit organizations, professional organizations and others. All comments were considered in developing the final revision. On November 29, 1993, at 58 FR 62992, OMB issued a revised circular which reflects the results of these efforts. This final rule represents HUD's adoption of the revised circular as part 84 of title 24 of the Code of Federal Regulations and sets forth the provisions and procedures HUD will follow in compliance with the uniform requirements set for Federal agencies in the newly revised OMB Circular A-110 regarding the administration of grants to and agreements with institutions of higher education, hospitals, commercial organizations and international organizations when operating domestically, and other non-profit organizations. If any statute specifically prescribes policies or specific requirements that differ from the standards provided herein, the provisions of the statute shall govern.

Recipients shall apply the provisions of this Circular to subrecipients performing substantive work under grants and agreements that are passed through or awarded by the primary recipient. This rule does not apply to grants, contracts, or other agreements between HUD and units of State or local governments covered by OMB Circular A-102, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments," as codified in 24 CFR part 85. In addition, subawards and contracts to State or local governments are not covered by this rule. However, this rule applies to subawards made by State and local governments to organizations covered by this rule. HUD shall apply the provisions of this part to commercial organizations and international organizations (when operating domestically).

The definition of "award" does not include technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, capital advances under the Sections 202 and 811 programs, 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. Therefore, this rule does not apply to these types of activities. Consequently, this rule does not apply to any matter involving funds which would be covered by a regulatory agreement between a mortgagor and the Secretary, executed under Sections 201, 207(b), 232(d)(1), 242(d)(1), and 236 (including Rental Assistance Payments) of the National Housing Act; Section 101(a) of the Housing and Urban Development Act of 1965; and Section 201(a) of the Housing and Community Development Amendments of 1978.

Other Matters

Justification for Interim and Final Rule

The Department has determined that notice and public comment are unnecessary and contrary to the public interest before making this rule effective because the substance of the rule received public comment when the circular was published on August 27, 1992. All comments received were reviewed and considered in the development of the revised circular. However, the Department will accept and review any comments received on subpart E because of the selective use of certain provisions as they apply to the use of lump sum grants.

Executive Order 12866

This rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and review, issued by the President on September 30, 1993. Any changes made in the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection with the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. It pertains only to the administration of grants and agreements with institutions of higher education, hospitals, and other non-profit organizations.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being. It pertains only to the administration of grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations.

Semiannual Agenda of Regulations

This rule was listed as item number 1527 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20434) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR part 84

Accounting, Colleges and universities, Grant programs—Housing and community development, Loan programs—Housing and community development, Nonprofit organizations, Reporting and recordkeeping requirements.

Accordingly, subtitle A of title 24 of the Code of Federal Regulations is amended to add a new part 84, consisting of subparts A through E and appendix A, as follows:

PART 84—GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

Subpart A—General

- Sec.
- 84.1 Purpose.
- 84.2 Definitions.
- 84.3 Effect on other issuances.
- 84.4 Deviations.
- 84.5 Subawards.

Subpart B—Pre-Award Requirements

- 84.10 Purpose.
- 84.11 Pre-award policies.
- 84.12 Forms for applying for Federal assistance.
- 84.13 Debarment and suspension; Drug-Free Workplace.
- 84.14 Special award conditions.
- 84.15 Metric system of measurement.
- 84.16 Resource Conservation and Recovery Act.
- 84.17 Certifications and representations.

Subpart C—Post-Award Requirements**Financial and Program Management**

- 84.20 Purpose of financial and program management.
- 84.21 Standards for financial management systems.
- 84.22 Payment.
- 84.23 Cost sharing or matching.
- 84.24 Program income.
- 84.25 Revision of budget and program plans.
- 84.26 Non-Federal audits.
- 84.27 Allowable costs.
- 84.28 Period of availability of funds.

Property Standards

- 84.30 Purpose of property standards.
- 84.31 Insurance coverage.
- 84.32 Real property.
- 84.33 Federally-owned and exempt property.
- 84.34 Equipment.
- 84.35 Supplies and other expendable property.

- 84.36 Intangible property.
- 84.37 Property trust relationship.

Procurement Standards

- 84.40 Purpose of procurement standards.
- 84.41 Recipient responsibilities.
- 84.42 Codes of conduct.
- 84.43 Competition.
- 84.44 Procurement procedures.
- 84.45 Cost and price analysis.
- 84.46 Procurement records.
- 84.47 Contract administration.
- 84.48 Contract provisions.

Reports and Records

- 84.50 Purpose of reports and records.
- 84.51 Monitoring and reporting program performance.
- 84.52 Financial reporting.
- 84.53 Retention and access requirements for records.

Termination and Enforcement

- 84.60 Purpose of termination and enforcement.
- 84.61 Termination.
- 84.62 Enforcement.

Subpart D—After-the-Award Requirements

- 84.70 Purpose.
- 84.71 Closeout procedures.
- 84.72 Subsequent adjustments and continuing responsibilities.
- 84.73 Collection of amounts due.

Subpart E—Use of Lump Sum Grants

- 84.80 Conditions for use of Lump Sum (fixed price or fixed amount) grants.
- 84.81 Definition.
- 84.82 Provisions applicable to lump sum grants.
- 84.83 Property standards.
- 84.84 Procurement standards.
- 84.85 Reports and records.
- 84.86 Termination and enforcement.
- 84.87 Closeout procedures, subsequent adjustments and continuing responsibilities.

Appendix A to Part 84—Contract Provisions

Authority: 42 U.S.C. 3535(d).

Subpart A—General**§ 84.1 Purpose.**

This part establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. Additional or inconsistent requirements shall not be imposed, except as provided in §§ 84.4, and 84.14 or unless specifically required by Federal statute or executive order. Non-profit organizations that implement Federal programs for the States are also subject to State requirements.

§ 84.2 Definitions.

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.

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.

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.

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.

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 HUD 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, capital advances under the Sections 202 and 811 programs, 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.

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

Closeout means the process by which HUD determines that all applicable administrative actions and all required work of the award have been completed by the recipient and HUD.

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

Cost sharing or matching means that portion of project or program costs not borne by HUD.

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 HUD sponsorship ends.

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

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 \$5000 or more per unit. However, consistent with recipient policy, lower limits may be established.

Excess property means property under the control of HUD that, as determined by the Secretary, is no longer required for its needs or the discharge of its responsibilities.

Exempt property means tangible personal property acquired in whole or in part with Federal funds, where HUD 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.

Federal awarding agency means the Federal agency that provides an award to the recipient.

Federal funds authorized means the total amount of Federal funds obligated by HUD for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by HUD regulations or implementing instructions.

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.

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

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.

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.

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.

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.

Prior approval means written approval by an authorized official evidencing prior consent.

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 §§ 84.24 (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 HUD 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.

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.

Project period means the period established in the award document during which HUD sponsorship begins and ends.

Property means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

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

Recipient means an organization receiving financial assistance directly from HUD to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term includes commercial organizations, international organizations when operating domestically (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients. 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. The term does not include mortgagors that receive mortgages insured or held by HUD or mortgagors or project owners that receive capital advances from HUD under the Section 202 and 811 programs.

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.

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

Subaward means:

(1) 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".

(2) For Community Development Block Grants, the term "subaward" does not include the arrangement whereby the prime recipient transfers funds to another entity and that entity is the project. A distinction is made between such a transfer for the furtherance of the prime recipient's goals and the transfer of funds to a subrecipient who carries out activities and is accountable to the prime recipient. For example, in a CDBG award where a prime recipient has as its program goal the revitalization of a downtown area, the funds transferred to a business in the downtown area to remodel its store would not be considered a subaward subject to this part 84.

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 includes commercial organizations and international organizations operating domestically (such as agencies of the United Nations).

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."

Suspension means an action by HUD that temporarily withdraws HUD sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by HUD. Suspension of an award is a separate action from suspension under HUD regulations implementing E.O. 12549 and E.O. 12689, "Debarment and Suspension," at 24 CFR part 24.

Termination means the cancellation of HUD sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

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.

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.

Unobligated balance means the portion of the funds authorized by HUD that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

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.

Working capital advance means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 84.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 84.4.

§ 84.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this rule when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this rule shall be permitted only in unusual circumstances. HUD may apply more restrictive requirements to a class of recipients when approved by OMB. HUD may apply less restrictive requirements when awarding small awards and when approved by OMB, except for those requirements which are

statutory. Exceptions on a case-by-case basis may also be made by HUD.

§ 84.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals, commercial organizations and international organizations operating domestically, or other non-profit organizations. State, local and Federally recognized Indian tribal government subrecipients are subject to the provisions of regulations implementing the grants management common rule, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments," (24 CFR part 85).

Subpart B—Pre-Award Requirements

§ 84.10 Purpose.

Sections 84.11 through 84.17 prescribe forms and instructions and other pre-award matters to be used in applying for HUD awards.

§ 84.11 Pre-award policies.

(a) *Use of Grants and Cooperative Agreements, and Contracts.* In each instance, HUD 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.

(b) *Public Notice and Priority Setting.* HUD shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

§ 84.12 Forms for applying for Federal assistance.

(a) HUD 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 HUD 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 HUD.

(c) For Federal programs covered by E.O. 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 *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.

§ 84.13 Debarment and suspension; Drug-Free Workplace.

(a) HUD and its recipients and subrecipients shall comply with the nonprocurement debarment and suspension common rule implementing E.O.s 12549 and 12689, "Debarment and Suspension," at 24 CFR part 24. 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.

(b) HUD and its recipients and subrecipients shall comply with the certification requirements of the Drug-Free Workplace Act of 1988 (42 U.S.C. 701), as set forth at 24 CFR part 24, subpart F.

§ 84.14 Special award conditions.

If an applicant or recipient:

(a) Has a history of poor performance;
(b) Is not financially stable;
(c) Has a management system that does not meet the standards prescribed in this part;

(d) Has not conformed to the terms and conditions of a previous award; or
(e) Is not otherwise responsible, HUD 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.

§ 84.15 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. HUD shall follow the provisions of E.O. 12770, "Metric Usage in Federal Government Programs."

§ 84.16 Resource Conservation and Recovery Act.

Under the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94-580, 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 through 254). Accordingly, State and local institutions of higher education, hospitals, commercial organizations and international organizations when operating domestically, 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.

§ 84.17 Certifications and representations.

Unless prohibited by statute or codified regulation, HUD is authorized and encouraged to allow 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 agency. 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****§ 84.20 Purpose of financial and program management.**

Sections 84.21 through 84.28 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.

§ 84.21 Standards for financial management systems.

(a) HUD 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 § 84.52. If a recipient 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 their 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, HUD, 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) HUD 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."

§ 84.22 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:

(1) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient; and

(2) Financial management systems that meet the standards for fund control and accountability as established in § 84.21. 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 HUD 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. 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 HUD instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. HUD 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, HUD 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 HUD has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, HUD may provide cash on a working capital advance basis. Under this procedure, HUD 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, HUD 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, HUD shall not withhold payments for proper charges made by recipients at any time during the project period unless paragraphs (h)(1) or (h)(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, HUD 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) of this section, HUD 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), (k)(2), or (k)(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 Department of Health and Human Services, Payment Management System, P.O. Box 6021, Rockville, MD 20852. In keeping with Electronic Funds Transfer rules (31 CFR part 206), interest should be remitted to the HHS Payment Management System through an electronic medium such as the FEDWIRE Deposit system. Recipients which do not have this capability should use a check. 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 Federal awarding agency, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this rule, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Federal agencies shall not require more than an original and two copies of these forms.

(1) *SF-270, Request for Advance or Reimbursement.* HUD has adopted the SF-270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. HUD has the option of using this form 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.* HUD has adopted the SF-271 as the standard form to be used for requesting reimbursement for construction programs. However, HUD may substitute the SF-270 when HUD determines that it provides adequate information to meet Federal needs.

§ 84.23 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 HUD.

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

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

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If HUD 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 (c)(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, HUD 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 paragraphs (g)(1) or (g)(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 HUD 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.

§ 84.24 Program income.

(a) HUD 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 HUD regulations or 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 HUD 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 HUD authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) In the event that HUD does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) of this section shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) of this section shall apply automatically unless HUD indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in § 84.14.

(e) Unless HUD regulations or 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 HUD regulations or 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 §§ 84.30 through 84.37).

(h) Unless HUD regulations or 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.

§ 84.25 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 HUD 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.

(c) For nonconstruction awards, recipients shall request prior approvals from HUD 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 HUD.

(6) The inclusion, unless waived by HUD, 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 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, HUD is authorized, at its option, to waive cost-related and administrative prior written approvals required by Circular A-110 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 HUD. All pre-award costs are incurred at the recipient's risk (i.e., HUD 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 HUD 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 HUD provides otherwise in HUD's regulations, the prior approval requirements described in paragraph (e) of this section are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) of this section applies.

(f) HUD 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 HUD. HUD 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) of this section, do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from HUD for budget revisions whenever paragraphs (h)(1), (h)(2) or (h)(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 § 84.27.

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

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

(k) For both construction and nonconstruction awards, HUD shall require recipients to notify HUD 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 \$5000 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 HUD indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, HUD 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, HUD shall inform the recipient in writing of the date when the recipient may expect the decision.

§ 84.26 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," as codified in 24 CFR part 45.

(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 HUD regulations implementing OMB Circular A-128,

"Audits of State and Local Governments," at 24 CFR part 44.

(c) Hospitals are covered by the audit provisions of OMB Circular A-133, as codified in 24 CFR part 44.

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

§ 84.27 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.

§ 84.28 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 HUD.

Property Standards

§ 84.30 Purpose of property standards.

Sections 84.31 through 84.37 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. HUD 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 §§ 84.31 through 84.37.

§ 84.31 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.

§ 84.32 Real property.

HUD prescribes the following requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards:

(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 HUD.

(b) The recipient shall obtain written approval by HUD 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 HUD.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from HUD or its successor Federal awarding agency. HUD 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 HUD 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.

§ 84.33 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 HUD. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to HUD for further HUD utilization.

(2) If HUD has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless HUD 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 E.O. 12821, "Improving Mathematics and Science Education in Support of the National Education Goals.") Appropriate instructions shall be issued to the recipient by HUD.

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

§ 84.34 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 equipment without approval of HUD. When the equipment is 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:

(1) Activities sponsored by HUD which funded the original project; then
(2) Activities sponsored by other Federal awarding agencies.

(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 HUD that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. 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 HUD. 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 HUD.

(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 HUD 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 HUD.

(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 \$5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to HUD 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 HUD. HUD shall determine whether the equipment can be used to meet HUD's requirements. If no requirement exists within HUD, the availability of the equipment shall be reported to the General Services Administration by HUD to determine whether a requirement for the equipment exists in other Federal agencies. HUD 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 HUD 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 HUD for such costs incurred in its disposition.

(4) HUD 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) HUD 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 HUD fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

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

§ 84.35 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 \$5000 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.

§ 84.36 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. HUD 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 HUD, the Federal Government has the right to paragraphs (c)(1) and (c)(2) of this section.

(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 HUD. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 84.34(g).

§ 84.37 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. HUD 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

§ 84.40 Purpose of procurement standards.

Sections 84.41 through 84.48 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 HUD upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

§ 84.41 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 HUD, 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.

§ 84.42 Codes 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.

§ 84.43 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. The other factors shall include the bidder's or offeror's compliance with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), hereafter referred to as "Section 3." Section 3 provides that, to the greatest extent feasible, and consistent with existing Federal, State, and local laws, and regulations, economic opportunities generated by certain HUD financial assistance shall be directed to low- and very low-income persons. 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.

§ 84.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that paragraphs (a)(1), (a)(2) and (a)(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 procuring instruments used (e.g., fixed price contracts, cost reimbursable 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 made only with 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; compliance with public policy, including, where applicable, Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u); 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," at 24 CFR part 24.

(e) Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as requests 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 HUD's implementation of Circular A-110.

(2) The procurement is expected to exceed \$100,000 or the small purchase threshold fixed at 41 U.S.C. 403 (11), whichever is greater, 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 threshold, specifies a "brand name" product.

(4) The proposed award over the small purchase threshold 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 threshold.

§ 84.45 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.

§ 84.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold 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.

§ 84.47 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.

§ 84.48 Contract provisions.

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

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions 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 threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated 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, HUD may accept the bonding policy and requirements of the recipient, provided HUD 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. 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 threshold) awarded by recipients shall include a provision to the effect that the recipient, HUD, 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 procurement provisions of Appendix A to this rule, as applicable.

Reports and Records

§ 84.50 Purpose of reports and records.

Sections 84.51 through 84.53 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.

§ 84.51 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 § 84.26.

(b) HUD shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in § 84.51(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. HUD 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 HUD 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) HUD may make site visits, as needed.

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

§ 84.52 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) HUD requires recipients to use the SF-269 or SF-269A to report the status of funds for all nonconstruction projects or programs. HUD has 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) HUD shall prescribe whether the report shall be on a cash or accrual basis. If HUD 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) HUD 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) HUD requires 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 HUD upon request of the recipient.

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

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

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

(iii) When practical and deemed necessary, HUD may require recipients to report in the "Remarks" section the amount of cash advances received and retained 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. HUD may require a monthly report from those recipients receiving advances totaling \$1 million or more per year.

(v) HUD 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 HUD'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 HUD needs additional information or more frequent reports, the following shall be observed.

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

(2) When HUD determines that a recipient's accounting system does not meet the standards in § 84.21, 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. HUD, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) HUD will shade out any line item on any report if not necessary.

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

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

§ 84.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. HUD 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 HUD. 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 HUD, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocation plans, etc. as specified in § 84.53(g).

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

(d) HUD 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, HUD may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) HUD, 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 (e) are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, HUD shall not place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when HUD 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 HUD.

(g) *Indirect cost rate proposals, cost allocation plans, etc.* Paragraphs (g)(1) and (g)(2) of this section 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 HUD 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 HUD 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

§ 84.60 Purpose of termination and enforcement.

Sections 84.61 and 84.62 set forth uniform suspension, termination and enforcement procedures.

§ 84.61 Termination.

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

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

(2) By HUD 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 HUD 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 HUD 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 (a)(2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 84.71(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.

§ 84.62 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, HUD may, in addition to imposing any of the special conditions outlined in § 84.14, 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 HUD.

(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, HUD 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 HUD 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 (c)(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 E.O.s 12549 and 12689 and HUD's implementing regulations at 24 CFR part 24 (see § 84.13).

Subpart D—After-the-Award Requirements

§ 84.70 Purpose.

Sections 84.71 through 84.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 84.71 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. HUD may approve extensions when requested by the recipient.

(b) Unless HUD 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 or in HUD instructions.

(c) HUD 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 HUD 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, HUD 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 §§ 84.31 through 84.37.

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

§ 84.72 Subsequent adjustments and continuing responsibilities.

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

(1) The right of HUD 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 § 84.26.

(4) Property management requirements in §§ 84.31 through 84.37.

(5) Records retention as required in § 84.53.

(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 HUD and the recipient, provided the responsibilities of the recipient referred to in § 84.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 84.73 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, HUD may reduce the debt by paragraphs (a)(1), (a)(2) or (a)(3) of this section.

(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, HUD shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, "Federal Claims Collection Standards."

Subpart E—Use of Lump Sum Grants

§ 84.80 Conditions for use of Lump Sum (fixed price or fixed amount) grants.

(a) Heads of awarding activities (HAAs) shall determine and publish the funding arrangement for award programs having a published program regulation or Notice of Funding Availability. For other awards, discretion may be provided to Grant Officers to determine the funding arrangement on a transaction basis. In such cases, Grant Officers shall document the basis for selection of the funding arrangement in the negotiation record. Appropriate consideration to fixed amount (lump sum) awards shall be made if one or more of the following conditions are present:

(1) The HUD funding amount is definitely less than the total actual cost of the project.

(2) The HUD funding amount does not exceed \$100,000 or the small purchase threshold fixed at 41 U.S.C. 403 (11), whichever is greater.

(3) The project scope is very specific and adequate cost, historical, or unit pricing data is available to establish a fixed amount award with assurance that

the recipient will realize no increment above actual cost.

(b) [Reserved]

§ 84.81 Definition.

(a) A lump sum award is an award for a predetermined amount, as set forth in the grant agreement, which amount does not vary with the amount of the recipient's actual incurred costs. Under this type of award, HUD does not pay the recipient for its incurred costs but rather for completing certain defined events in the work or achievement of some other well-defined milestone.

Some of the ways in which the grant amount may be paid are, but are not limited to:

(1) In several partial payments, the amount of each agreed upon in advance, and the "milestone" or event triggering the payment also agreed upon in advance, and set forth in the grant;

(2) On a unit price basis, for a defined unit or units (such as a housing counseling unit), at a defined price or prices, agreed to in advance of performance of the grant and set forth in the grant; or,

(3) In one payment at grant completion.

(b) The key distinction between a lump sum and a cost reimbursement grant is the lack of a direct relationship between the costs incurred by the recipient and the amount paid by HUD in the lump sum arrangement.

§ 84.82 Provisions applicable only to lump sum grants.

In addition to the provisions of this subpart E, subparts A and B of this part apply to lump sum grants.

(a) *Financial and program management.* Paragraphs (b) through (e) of this section prescribe standards for financial management systems, methods for making payments, budget revision approvals, and making audits.

(b) *Standards for financial management systems.*

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

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

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

(4) Where HUD guarantees or insures the repayment of money borrowed by the recipient, HUD, 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.

(5) HUD may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(6) 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."

(c) *Payment.* (1) The standard governing the use of banks and other institutions as depositories of funds advanced under awards is, HUD 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) 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).

(3) Except as noted elsewhere in this part, only the following forms shall be authorized for the recipients in requesting payments. HUD shall not require more than an original and two copies of these forms.

(i) *SF-270, Request for Advance or Reimbursement.* HUD has adopted the SF-270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. The SF-270 shall also be used for lump sum payment requests. HUD, however, has the option of using this form for construction programs in lieu of the SF-271, "Outlay Report and Request for Reimbursement for Construction Programs."

(ii) *SF-271, Outlay Report and Request for Reimbursement for Construction Programs.* HUD has adopted the SF-271 as the standard form to be used for requesting reimbursement for construction programs. However, HUD may substitute the SF-270 when HUD determines that it provides adequate information to meet HUD's needs.

(d) *Revision of budget and program plans.* (1) 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 HUD requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(2) Recipients are required to report deviations from program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(3) For nonconstruction awards, recipients shall request prior approvals from HUD for one or more of the following program or budget related reasons.

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

(ii) The need for additional Federal funding.

(iii) 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.

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

(5) Except for requirements listed in paragraphs (d)(3)(i) and (d)(3)(ii) of this section, HUD is authorized, at its option, to waive cost-related and administrative prior written approvals required by Circular A-110 and OMB Circulars A-21 and A-122. Such waivers may include authorizing recipients to do any one or more of the following.

(i) 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 HUD in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This action may be taken unless:

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

(B) The extension requires additional Federal funds.

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

(6) For construction awards, recipients shall request prior written approval promptly from HUD for budget revisions whenever paragraphs (d)(6)(i) or (d)(6)(ii) of this section apply.

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

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

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

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

(e) *Non-Federal audits.* (1) 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," as codified in 24 CFR part 44.

(2) State and local governments shall be subject to the audit requirements contained in the Single Audit Act (31 U.S.C. 7501-7) and HUD regulations implementing OMB Circular A-128, "Audits of State and Local Governments," at 24 CFR part 45.

(3) Hospitals are covered by the audit provisions of OMB Circular A-133, as codified in 24 CFR part 44.

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

§ 84.83 Property standards.

(a) *Purpose of property standards.* Paragraphs (b) through (g) of this section 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. HUD 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 paragraphs (b) through (g) of this section.

(b) *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.

(c) *Real property.* HUD prescribes the following requirements for recipients concerning the use and disposition of

real property acquired in whole or in part under awards:

(1) 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 HUD.

(2) The recipient shall obtain written approval by HUD 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 HUD.

(d) *Federally-owned and exempt property.* (1) Federally-owned property.

(i) *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 HUD. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to HUD for further HUD utilization.

(ii) If HUD has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless HUD 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 (D)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, "Improving Mathematics and Science Education in Support of the National Education Goals.") Appropriate instructions shall be issued to the recipient by HUD.

(2) *Exempt property.* When statutory authority exists, HUD 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 HUD considers appropriate. Such property is "exempt property." Should HUD not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

(e) *Equipment.* (1) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(2) 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 equipment without approval of HUD. When the equipment is 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:

(i) Activities sponsored by HUD which funded the original project; then

(ii) Activities sponsored by other Federal awarding agencies.

(3) 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 HUD that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. 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 HUD.

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

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

(A) A description of the equipment.

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

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

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

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

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

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

(iii) 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.

(iv) 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 HUD.

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

(5) HUD 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) HUD 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 HUD fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

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

(f) *Intangible property.* (1) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. HUD 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.

(2) 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."

(3) Unless waived by HUD, the Federal Government has the right to paragraphs (f)(3)(i) and (f)(3)(ii) of this section.

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

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

(4) 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.

(g) *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. HUD 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.

§ 84.84 Procurement standards.

(a) *Purpose of procurement standards.* Paragraphs (b) through (i) of this section 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 HUD upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

(b) *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 HUD, 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.

(c) *Codes 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.

(d) *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. The other factors shall include the bidder's or offeror's compliance with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), hereafter referred to as "Section 3." Section 3 provides that, to the greatest extent feasible, and consistent with existing Federal, State, and local laws, and regulations, economic opportunities generated by certain HUD financial assistance shall be directed to low- and very low-income persons. 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.

(e) *Procurement procedures.* (1) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that paragraphs (e)(1)(i), (e)(1)(ii) and (e)(1)(iii) of this section apply.

(i) Recipients avoid purchasing unnecessary items.

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

(iii) Solicitations for goods and services provide for all of the following.

(A) 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.

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

(C) 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.

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

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

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

(2) 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.

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

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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.

(3) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable 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.

(4) Contracts shall be made only with 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; compliance with public policy, including, where applicable, Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u); record of past performance; financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.'s 12549 and 12689, "Debarment and Suspension," as set forth at 24 CFR part 24.

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

(i) A recipient's procurement procedures or operation fails to comply with the procurement standards in HUD's implementation of Circular A-110.

(ii) The procurement is expected to exceed \$100,000 or the small purchase threshold fixed at 41 U.S.C. 403 (11), whichever is greater, and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

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

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

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more

than the amount of the small purchase threshold.

(f) *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.

(g) *Procurement records.* Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(1) Basis for contractor selection;

(2) Justification for lack of

competition when competitive bids or offers are not obtained; and

(3) Basis for award cost or price.

(h) *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.

(i) *Contract provisions.* The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(1) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions 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.

(2) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) 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, HUD may accept the bonding policy and requirements of the recipient, provided HUD 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:

(i) 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.

(ii) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(iii) 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.

(iv) 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."

(4) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, HUD, 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.

(5) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this rule, as applicable.

§ 84.85 Reports and records.

(a) *Purpose of reports and records.* Paragraphs (b) and (c) of this section 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.

(b) Monitoring and reporting program performance.

(1) 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 § 84.82(e).

(2) The Federal awarding agency shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in paragraph (b)(6) of this section, 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 Federal awarding agency 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.

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

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

(i) 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.

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

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

(6) Recipients shall immediately notify HUD 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.

(7) HUD may make site visits, as needed.

(8) HUD shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

(c) Retention and access requirements for records.

(1) This paragraph (c) sets forth requirements for record retention and access to records for awards to recipients. Federal awarding agencies shall not impose any other record retention or access requirements upon recipients.

(2) 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 HUD. The only exceptions are the following:

(i) 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.

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

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

(3) Copies of original records may be substituted for the original records if authorized by HUD.

(4) HUD 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, HUD may make arrangements for recipients to retain any records that are continuously needed for joint use.

(5) HUD, 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 (c)(5) are not limited to the required retention period, but shall last as long as records are retained.

(6) Unless required by statute, HUD shall not place restrictions on recipients that limit public access to the records of recipients that are pertinent to an

award, except when HUD 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 HUD.

§ 84.86 Termination and enforcement.

(a) *Termination.* (1) Awards may be terminated in whole or in part only if paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section apply.

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

(ii) By HUD 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.

(iii) By the recipient upon sending to HUD 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 HUD 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)(i) or (a)(1)(ii) of this section.

(2) If costs are allowed under an award, the responsibilities of the recipient referred to in § 84.87(a)(1), 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.

(3) If costs are allowed, the cost principles in § 84.27 apply, even though the award was made on a lump-sum basis. Alternatively, a termination settlement may be reached by prorating the grant amount against the percentage of completion or by some other method as determined by the Grant Officer, as long as the method used results in an equitable settlement to both parties.

(b) *Enforcement.* (1) *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, HUD may, in addition to imposing any of the special conditions outlined in § 84.14, take one or more of the following actions, as appropriate in the circumstances.

(i) Temporarily withhold cash payments pending correction of the

deficiency by the recipient or more severe enforcement action by HUD.

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

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

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

(2) *Hearings and appeals.* In taking an enforcement action, HUD 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.

(3) *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 HUD 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 (b)(3)(i) and (b)(3)(ii) of this section apply.

(i) 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.

(ii) 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.

(4) *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 E.O.s 12549 and 12689 and HUD's implementing regulations at 24 CFR part 24 (see § 84.13).

§ 84.87 Closeout procedures, subsequent adjustments and continuing responsibilities.

(a) Closeout procedures.

(1) 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. HUD may approve extensions when requested by the recipient.

(2) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 84.83(b) through (g).

(b) *Subsequent adjustments and continuing responsibilities.*

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

(i) Audit requirements in § 84.26.

(ii) Property management requirements in §§ 84.83(b) through (g).

(iii) Records retention as required in § 84.53.

(2) 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 HUD and the recipient, provided the responsibilities of the recipient are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

Appendix A to Part 84—Contract Provisions

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity.*—All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 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 provision 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 HUD.

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 provision 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 HUD.

4. *Contract Work Hours and Safety Standards Act* (40 U.S.C. 327 through 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 provision 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 workweek of 40 hours. Work in excess of the standard workweek 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 workweek. 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 HUD.

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 provision 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 HUD 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 (E.O.s 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 E.O.s 12549 and 12689, "Debarment and Suspension," as set forth at 24 CFR part 24. 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 E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

9. *Drug-Free Workplace Requirements*—The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees (including individuals) of federal agencies, as a prior condition of being awarded a grant, to certify

that they will provide drug-free workplaces. Each potential recipient must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

Dated: September 1, 1994.

Henry G. Cisneros,
Secretary.

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Tuesday
September 13, 1994

Part III

**Department of
Transportation**

Coast Guard

46 CFR Part 28

**Commercial Fishing Industry Vessel
Regulations for Aleutian Trade Act
Vessels; Proposed Rule**

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 28

[CGD 94-025]

RIN 2115-AE77

Commercial Fishing Industry Vessel Regulations for Aleutian Trade Act Vessels

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise regulations for U.S. commercial fishing industry vessels subject to the Aleutian Trade Act (ATA) of 1990. This proposed rule would promulgate a new subpart regulating certain equipment requirements and operating procedures for fish tender vessels operating in the Aleutian trade. These regulations would allow for the continued cargo service by water to remote communities in Alaska while ensuring increased safety standards for the vessels engaged in this trade.

DATES: Comments must be received on or before November 14, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 94-025), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Mark D. Bobal, Office of Marine Safety, Security and Environmental Protection (G-MVI-4), Room 1405, U.S. Coast Guard Headquarters, Washington, DC 20593-0001, (202) 267-2307.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 94-025) and the specific section of this proposal to which each comment

applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Mark D. Bobal, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Mr. Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

Regulatory History

On April 19, 1990, the Coast Guard published a notice of proposed rulemaking (NPRM) for Commercial Fishing Industry Vessels (55 FR 14924). In the NPRM, the Coast Guard proposed to regulate U.S. documented or state numbered uninspected fishing, fish processing, and fish tender vessels, including vessels engaged in the Aleutian Trade, to implement the provisions of the Commercial Fishing Industry Vessel Safety Act of 1988. Subsequent to the NPRM, Congress enacted the Aleutian Trade Act of 1990 (ATA), significantly affecting the impact of the proposed regulations on vessels engaged in the Aleutian trade. The ATA provides for continued cargo service to remote communities in Alaska while ensuring increased safety standards for fish tender vessels operating in the Aleutian trade. As a result of the ATA, the Coast Guard published a supplemental notice of proposed rulemaking, (SNPRM), in the **Federal Register** on October 27, 1992 (57 FR 48670).

In response to the SNPRM, the Coast Guard received over 206 comments specifically opposing, and only 4 comments favoring, the proposed ATA regulations. In a second SNPRM, the Coast Guard is now proposing to

increase the safety standards for these vessels consistent with the comments received to the first SNPRM and establish a separate subpart in 46 CFR Part 28 for vessels engaged in the Aleutian trade.

Background and Purpose

The Aleutian Trade Act of 1990. On November 16, 1990, the President signed Pub. L. 101-595, The Aleutian Trade Act of 1990 ("the ATA"). The ATA applies only to fish tender vessels engaged in the transportation of cargo (including fishery related products) for hire to or from a place in Alaska west of 153° West longitude and east of 172° East longitude and only, if that place receives weekly common carrier service by water, to or from a place in the United States (except a place in Alaska). The ATA requires these fish tender vessels to meet new safety and manning standards over a specified period of time. Additional background information concerning the ATA and the Coast Guard's interpretation of the Act, may be found at page 48670 of the SNPRM published October 27, 1992.

Discussion of Comments

In response to the SNPRM of October 27, 1992, the Coast Guard received four comments supporting the ATA. They were from a common carrier, a ship yard, a naval architect and an interested party that did not identify its affiliation. Additionally, the Coast Guard received 206 comments opposing the ATA. These comments were from fishermen, fishing vessel companies, naval architects, shipyards, the State Legislature and Governor of Alaska, an insurance company, and the general public.

The primary objections to the proposed requirements were: (1) The potential for severe economic hardship to the operators of ATA vessels, and the people and companies the vessels serve in the outlying areas; (2) the possibility that common carriers serving the Aleutian area would have a monopoly on seaborne commerce in this area and could significantly increase rates; and (3) the lack of need for additional regulations when considering the positive safety record of ATA vessels. Additionally, comments opposed the proposed rules by arguing that: (1) The Coast Guard greatly underestimated the cost of compliance; (2) the Commercial Fishing Industry Vessel Safety Act states that the Coast Guard cannot require alterations to existing vessels; and (3) the standards proposed are excessive and greater than those required of an inspected cargo vessel.

Discussion of Proposed Rules

In response to the large number of comments opposing the first SNPRM, the Coast Guard will revise its proposed regulations and issue a second SNPRM. The Coast Guard believes this SNPRM proposes standards that would upgrade safety requirements aboard ATA vessels and yet be responsive to the comments received to the first SNPRM. In this SNPRM, the Coast Guard is proposing a new subpart G, to be entitled Aleutian Trade Act Vessels. Each section is summarized in the following paragraphs.

Subpart A—General Provisions

Section 28.040 Incorporation by Reference

This section lists the industry standards that are incorporated by reference and the corresponding sections where each standard is reference as the governing requirement.

In the interest of keeping the regulations as uncomplicated as possible, the number of standards incorporated by reference has been minimized.

National Fire Protection Association, NFPA, sections 310-13 and 310-15 of NFPA 70 is referenced in § 28.865.

Society of Automotive Engineers, SAE, section J1475 is needed for compliance in § 28.880.

Underwriters Laboratories, UL, standard 217-1985, "Single and Multiple Station Smoke Detectors" to supplement the information in § 28.830

Subpart G—Aleutian Trade Act Vessels

Section 28.800 Applicability and General Requirements

This section describes the revised applicability for ATA vessels proposed for this subpart. Fish tender vessels engaged in the Aleutian trade are subject to inspection under the provisions of 46 U.S.C. 3301 (1), (6), or (7) except those that:

1. Are not more than 500 gross tons;
2. Have an incline test performed by a marine surveyor; and
3. Have written stability instructions posted on board the vessel.

Section 28.805 Launching of Survival Craft

This section would require ATA vessels to comply with 46 CFR subpart B, which requires inflatable liferafts (SOLAS A Packs) for 100% complement coverage. To facilitate the manual launching of survival craft which have a mass of more than 110 pounds, (50 kg), each vessel must have a gate or

another opening in its bulwarks, deck rails, or lifelines.

Section 28.810 Deck Rails, Lifelines, Storm Rails and Hand Grabs

This section would adopt the same requirements of subpart D, which are essentially identical to those found in subchapter I.

Section 28.815 Bilge Pumps, Bilge Piping, and Dewatering Systems

This section would require two power bilge pumps, each with a separate source of power (e.g. one electric pump and one mechanically driven or power take-off (PTO) pump) connected to a fixed system. However, a portable powered pump could substitute for one of the required pumps as long as it meets specific criteria as promulgated in these regulations. In contrast, subpart D requires one powered bilge pump connected to a fixed system while subchapter I requires three powered pumps for cargo vessels.

Section 28.820 Fire Pumps, Fire Mains, Fire Hydrants, and Fire Hoses

This section would require one power driven fire pump, connected to fixed piping, capable of delivering water at a minimum of 50 gallons per minute. In addition, a portable pump must be carried that has a capacity of 9500 gallons per hour and is capable of being connected to the firemain and hoses. However, if the vessel already has a portable pump satisfying the second bilge pump requirement, no additional portable pump would be required as long as it is properly equipped to handle both firefighting and flood control.

Section 28.825 Excess Fire Detection and Protection Equipment

This section would cover excess fire detection and protection equipment and is in lieu of § 28.153.

Section 28.830 Fire Detection System

This section would grandfather existing systems and equipment within specific limits and regulations, and provides acceptance latitude. It would require that accommodation spaces to be fitted with modular smoke detectors, and require manual remote shutdown of certain machinery outside of certain spaces.

Section 28.835 Fuel Systems

This section would incorporate applicable regulations of subchapter F for any replacement and/or alteration to the existing grandfathered piping. It would also add the requirement for remote shutoff valves on certain fuel tanks, metal shields under filters, and

limits the length of nonmetallic flexible hose used (for vibration purposes only).

Note: Some of the piping aboard ex-Navy yard oilers used in the Aleutian trade was built and installed to Navy specifications and was encased in cement ballast. This arrangement would be grandfathered. In contrast, subpart D requires all fuel lines to be constructed of seamless material only, except short lengths of flex hose for vibration. Cargo vessels have the same requirements and, additionally, all valves and fittings must meet specific regulations of subchapter F.

Section 28.840 Means for Stopping Pumps, Ventilation, and Machinery

This section would contain requirements for remote controls similar to those applicable to cargo vessels.

Section 28.845 General Requirements for Electrical Systems

This section would adopt nearly all of the requirements of subpart D which provide for acceptance of recognized standards such as Underwriters Laboratory (UL). An added grandfathering clause would allow acceptance of existing materials and installations, on a case by case basis. For example, existing cables and wiring runs could be allowed to remain as presently constructed and routed. However, any replacement wiring or new installations would have to meet specific requirements. In comparison, the installation of all electrical systems and interior communications as to design, construction, and material acceptance for cargo vessels must be done in accordance with subchapter J.

Section 28.850 Main Source of Electrical Power

This section proposes general requirements for electrical systems that are presently found on ATA vessels.

Section 28.855 Electrical Distribution Systems

This section requires that a distribution system which has neutral bus or conductor have the neutral bus or conductor grounded. It also requires a grounded distribution system to have only one connection to ground. The one connection to ground must be at the switchboard, or on a nonmetallic vessel at the common ground point.

Section 28.860 Overcurrent Protection and Switched Circuits

This section would require the same standards found in subpart D, which are similar to the requirements for inspected vessels contained in 46 CFR subchapter J—Electrical Engineering Regulations.

Section 28.865 Wiring Methods and Materials

This section would require the same standards for wires and conductors found in subpart D.

Section 28.870 Emergency Source of Electrical Power

This section would require an emergency source of electrical power which is capable of supplying connected loads for at least 3 hours and which is physically separated from the main machinery space. This segregation would help ensure that one casualty did not disable all sources of electrical power. If the source is a battery, specific regulations would have to be satisfied. Note: No emergency generator is required—it is believed the combination of a duty engineer and back-up fire & bilge pumps as well as additional powered portable pump should be sufficient. Subpart D requires an independent source of electrical power located outside the machinery space capable of supplying all loads listed above plus the steering gear, and fire & bilge pumps continuously for 3 hours. Cargo vessels require emergency lighting for 6 hours.

Section 28.875 Radar, Depth Sounding, and Auto-pilot

This section would adopt the equipment requirements of subpart D for radar and depth sounding devices. In addition, procedures would be proposed for the use of an auto-pilot.

Section 28.880 Hydraulic Equipment

This section would grandfather some existing hydraulic hose runs and materials. It provides specifics for fluid, hose, fittings, and compatibility for use. It adds the requirement for fail-safe system components and provides requirements that enhance operator safety. It reduces existing overuse of nonmetallic hydraulic flex hose by limiting its use in runs where flexibility is not specifically required. However, any retrofit of hydraulic hoses would have to be accomplished over a period of time, such as replacing the flex hose with hard piping only whenever renewals, replacements or alterations are being accomplished. In comparison, subpart D specifically limits the allowable length of nonmetallic flexible hose to 30" while subchapter I requires specific material approval in applicable sections of subchapter F.

Section 28.885 Cargo Gear

This section would take the cargo equipment found presently on these vessels and incorporate them with subchapter I requirements.

Section 28.890 Examination and Certification of Compliance

This section would require that each ATA vessel be examined for compliance once every two years. The examination would be performed by the American Bureau of Shipping (ABS), a similarly qualified organization, or another accepted organization. The organization performing the examination would be required to provide the owner and the cognizant Coast Guard District Commander, (Attention: Fishing Vessel Safety Coordinator) with a copy of the signed certification letter if the vessel was found to be in compliance. A copy of a certification letter would also be required to be maintained on board the vessel. With respect to the inspection provisions, 46 U.S.C. 3302(c) was amended by exempting fishing, fish processing, and fish tender vessels of not more than 500 gross tons from consideration as a freight vessel, a seagoing barge, or a seagoing motor vessel under 46 U.S.C. 3301 (1), (6), and (7) if, when the vessel transports cargo to or from Alaska, that place does not receive weekly common carrier service by water from a place in the United States; or the cargo is of a type not accepted by that common carrier service; or in the case of a fish tender vessel, the vessel is not engaged in the Aleutian trade.

A fish tender vessel engaged in the Aleutian trade is not subject to inspection under the provisions of 46 U.S.C. 3301 (1), (6), and (7), if the vessel is not more than 500 gross tons, has an incline test performed by a marine surveyor, and has written stability instructions posted on board. These provisions were effective May 16, 1991.

Section 28.895 Survey and Classification

This proposed section would require each ATA vessel which undergoes a major conversion completed after July 27, 1990, to be classed by the ABS or another organization determined by the Commandant to be similarly qualified.

Section 28.900 Loadlines

This section would require that a fish tender vessel of not more than 500 gross tons, engaged in the Aleutian trade, obtain a loadline certificate.

Section 28.905 Post Accident Inspection

This proposed section was suggested by a common carrier during the first SNPRM to require that an ATA vessel undergo a general or partial survey by a Coast Guard Representative following an accident or if a defect is discovered which affects the safety of the vessel.

This requirement would be similar to that found in subchapter I for cargo vessels, however a third party would be conducting this post accident inspection.

Section 28.910 Repairs and Alterations

This proposed section, again suggested during the first SNPRM, would require the managing operators of an ATA vessel to notify a Coast Guard Representative prior to making repairs or alterations to an ATA vessel that may affect the safety of the vessel.

Section 28.915 Manning and Crew

This proposed section would establish manning requirements for a fish tender vessel of not more than 500 gross tons, engaged in the Aleutian trade.

This section also proposes that machinery spaces be under the control, when at sea, of an engineer designated as in charge. This designation may be: (a) In writing by the owner, operator, or master; (b) by an entry in the ship's log if one is maintained; or (c) by a designation on the emergency instructions required under § 28.265. If designated engineers are not part of the vessel's complement, then all the requirements of subpart D would have to be met in addition to this subpart. Any component or system on a vessel found to be in conflict between the regulations found in subparts D and G, then the higher standard will apply. ATA amended 46 U.S.C. 8702 to require that a fish tender vessel engaged in the Aleutian trade comply with the crew requirements set out in § 8702, but allowed the percentage of the deck crew, who are required to have merchant mariners documents endorsed for a rating of at least able seaman, to be reduced from 65 to 50 percent of crew size. These provisions were effective November 16, 1991.

Lastly, the ATA amended 46 U.S.C. Chapter 73 to allow acceptance of service on an ATA vessel to be used by an individual to qualify for an endorsement as an "able seaman—fishing industry", "able seaman—unlimited" or "able seaman—special." If the service is on board a vessel of at least 100 gross tons, the service may be accepted to qualify as an "able seaman—limited"

Incorporation by Reference

Additional material would be incorporated by reference and listed in 46 CFR 28.040: National Fire Protection Association (NFPA 70-1987), sections 310-13 and 310-15 would be incorporated in § 28.865; Society of

Automotive Engineers, SAE, section J1475 would be incorporated in § 28.880; and Underwriters Laboratories, UL, standard 217-1985, "Single and Multiple Station Smoke Detectors" would be incorporated in § 28.830. Copies of this material will be available for inspection where indicated under ADDRESSES, and from the sources listed in § 28.040.

Before publishing a final rule, the Coast Guard will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The Coast Guard estimates that only 20 vessels out of an estimated U.S. commercial fishing fleet in excess of 120,000 vessels would be affected by this rule. This proposed rule includes a number of grandfathered provisions. Therefore, the Coast Guard believes that existing equipment onboard these 20 vessels should be upgraded and replaced only when the existing equipment is no longer serviceable.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal, if

adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include: (1) Small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields; and (2) governmental jurisdictions with populations of less than 50,000.

An estimated 20 commercial fishing industry vessels are involved in the Aleutian Trade Act. A number of these vessels are owned or operated by small entities. However, the Coast Guard estimates that the cost of complying with these revised proposed regulations will be minor. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see ADDRESSES) explaining why you think your business qualifies and in what way and to what degree this proposal will economically affect your business.

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This notice proposes regulations for ATA vessels only. Since this rule affects

specific vessels both inside and outside state waters, the Coast Guard intends to preempt State action addressing the same subject matter.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. These proposed rules are to enhance certain safety equipment requirements and general operating procedures of ATA vessels and have no significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 46 CFR Part 28

Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR part 28 as follows:

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

1. The authority citation for part 28 is revised to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4506, 6104, 8104, 10603; 49 U.S.C. 5103; 49 CFR 1.46.

2. Section 28.40(b) is revised to read as follows:

§ 28.40 Incorporation by reference.

* * * * *

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Boat and Yacht Council (ABYC), P.O. Box 747, 405 Headquarters Dr., Suite 3, Millersville, MD 21108-0747:	
E-1-1972—Bonding of Direct Current Systems	28.345
E-8-1985—Alternating Current (AC) Electrical Systems on Boats	28.345
E-9-1981—Recommended Practices and Standards Covering Direct Current (DC) Electrical Systems on Boat	28.345
H-2-1989—Ventilation of Boats Using Gasoline	28.340
H-25-1986—Portable Fuel Systems for Flammable Liquids	28.335
H-33-1989—Diesel Fuel Systems	28.335
P-1-1986—Installation of Exhaust Systems for Propulsion and Auxiliary Engines	28.380
International Maritime Organization (IMO), Publications Section, 4 Albert Embankment, London SE1 7SR, England:	
Resolution A.658(16) "Use and Fitting of Retro-Reflective Materials on Life-Saving Appliances", dated November 1989	28.135
National Fire Protection Association (NFPA), 60 Batterymarch Park, Quincy, MA 02269:	
70-1990—National Electrical Code (also known as ANSI/NFPA 70-1990)	28.350
	28.370
302-1989—Pleasure and Commercial Motor Craft	28.335
	28.340
	28.345
17-1985—Dry Chemical Extinguishing Systems	28.330
17A-1986—Wet Chemical Extinguishing Systems	28.330

310-13—Conductor Construction and Applications	28.865
310-15—Ampacity	28.865
Society of Automotive Engineers (SAE), 400 Commonwealth Drive, Warrendale, PA 15096:	
SAE J 1475-1984—Hydraulic Hose Fitting for Marine Applications	28.880
SAE J 1942-1989—Hose and Hose Assemblies for Marine Applications	28.405
Underwriters Laboratories, Inc. (UL), 333 Pfingsten Rd., Northbrook, IL 60062:	
UL 217-1985—Single and Multiple Station Smoke Detectors	28.325
UL 710-1990—Exhaust Hoods for Commercial Cooking Equipment	28.330

3-4. Section 28.50 is amended by adding the following definitions in alphabetical order to read as follows:

§ 28.50 Definition of terms used in this part.

* * * * *

Aleutian trade means the transportation of cargo, including fishery related products, for hire on board a fish tender vessel to or from a place in Alaska west of 153 degrees West longitude and east of 172 degrees East longitude if that place receives weekly common carrier service by water, to or from a place in the United States, except a place in Alaska.

* * * * *

Coast Guard Representative means a person employed by the U.S. Coast Guard, an accepted organization, or a similarly qualified organization approved in examining commercial fishing industry vessels. Contact Chief, Fishing Vessel and Offshore Safety Branch, Commandant, (G-MVI-4), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001 for a current list of accepted organizations or similarly qualified organizations.

* * * * *

5. The heading of subpart C is revised to read as follows:

Subpart C—Requirements for Documented Vessels That Operate Beyond the Boundary Lines or With More Than 16 Individuals On Board, or for Fish Tender Vessels Engaged in the Aleutian Trade

6. Section 28.200 is revised to read as follows:

§ 28.200 Applicability.

Each documented commercial fishing industry vessel must meet the requirements of this subpart in addition to the requirements of subparts A and B of this part if it:

(a) Operates beyond the Boundary Lines;

(b) Operates with more than 16 individuals on board; or

(c) Is a fish tender vessel engaged in the Aleutian trade.

7. Part 28 is amended by adding subchapter G to read:

Subpart G—Aleutian Trade Act Vessels

Sec.

- 28.800 Applicability and general requirements.
- 28.805 Launching of survival craft.
- 28.810 Deck rails, lifelines, storm rails and hand grabs.
- 28.815 Bilge pumps, bilge piping, and dewatering systems.
- 28.820 Fire pumps, fire mains, fire hydrants, and fire hoses.
- 28.825 Excess fire detection and protection equipment.
- 28.830 Fire detection system.
- 28.835 Fuel systems.
- 28.840 Means for stopping pumps, ventilation, and machinery.
- 28.845 General requirements for electrical systems.
- 28.850 Main source of electrical power.
- 28.855 Electrical distribution systems.
- 28.860 Overcurrent protection and switched circuits.
- 28.865 Wiring methods and materials.
- 28.870 Emergency source of electrical power.
- 28.875 Radar, depth sounding, and autopilot.
- 28.880 Hydraulic equipment.
- 28.885 Cargo gear.
- 28.890 Examination and certification of compliance.
- 28.895 Survey and classification.
- 28.900 Loadlines.
- 28.905 Post accident inspection.
- 28.910 Repairs and alterations.
- 28.915 Manning and crew requirements.

Subpart G—Aleutian Trade Act Vessels

§ 28.800 Applicability and General Requirements.

(a) This subpart applies to each fish tender vessel engaged in the Aleutian trade that has not undergone a major conversion and:

(1) Was operated in the Aleutian trade before September 8, 1990; or

(2) Was purchased to be used in the Aleutian trade before September 8, 1990, and entered into service in the Aleutian trade before June 1, 1992.

(b) Except as noted otherwise in this subpart, a vessel subject to this subpart must also comply with the requirements of subparts A, B, and C of this part.

(c) Each fish tender vessel engaged in the Aleutian trade that undergoes a major conversion after September 15, 1991 must comply with the additional requirements of subpart D of this part.

(d) A fish tender vessel engaged in the Aleutian trade is subject to inspection under the provisions of 46 U.S.C. 3301 (1), (6), or (7) unless it:

- (1) Is not more than 500 gross tons;
- (2) Has an incline test performed by a marine surveyor; and
- (3) Has written stability instructions posted on board the vessel.

(e) A vessel that does not have a designated engineer as part of its complement must comply with the requirements of subpart D of this part in addition to the requirements of this subpart.

§ 28.805 Launching of survival craft.

In addition to the survival craft requirements in subpart B of this part, each vessel must have a gate or other opening in the deck rails, lifelines, or bulwarks adjacent to the stowage location of each survival craft which has a mass of more than 110 pounds (50 KG), so that the survival craft can be manually launched.

§ 28.810 Deck rails, lifelines, storm rails and hand grabs.

(a) Except as otherwise provided in paragraph (d) of this section, deck rails, lifelines, grab rails, or equivalent protection must be installed near the periphery of all weather decks accessible to individuals. Where space limitations make deck rails impractical, hand grabs may be substituted.

(b) The height of deck rails, lifelines, or bulwarks must be at least 39½ inches (1 meter) from the deck, except where this height would interfere with the normal operation of the vessel, a lesser height may be substituted.

(c) All deck rails or lifelines must be permanently supported by stanchions at intervals of not more than 7 feet (2.3 meters). Stanchions must be through bolted or welded to the deck.

(d) Portable stanchions and lifelines may be installed in locations where permanently installed deck rails would impede normal cargo operations or emergency recovery operations.

(e) Deck rails or lifelines must consist of evenly spaced courses. The spacing between courses must not be greater than 15 inches (0.38 meters). The opening below the lowest course must

not be more than 9 inches (0.23 meters). Lower courses are not required where all or part of the space below the upper rail is fitted with a bulwark, chain link fencing, wire mesh, or an equivalent.

(f) A suitable storm rail or hand grab must be installed where necessary in a passageway, at a deckhouse side, at a ladder, and a hatch where an individual might have access.

§ 28.815 Bilge pumps, bilge piping, and dewatering systems.

Instead of § 28.255, each vessel to which this subpart applies must meet the following requirements:

(a) Each vessel must be equipped with a fixed, self priming, powered, bilge pump connected to a bilge manifold and piping capable of draining any watertight compartment, other than tanks and small buoyancy compartments, under all service conditions. Large spaces, such as engine rooms and cargo holds, must be fitted with more than one suction line.

(b) In addition, each vessel must be fitted with a fixed second, or back-up bilge pump having an independent and separate source of power from the pump required in paragraph (a) of this section. One of the bilge pumps may be attached to the propelling engine.

(c) A portable bilge pump may substitute for the secondary pump required above, as long as it is:

(1) Self priming and provided with a suitable suction hose of adequate length to reach the bilges of each watertight compartment it must serve and is fitted with a built-in check valve and strainer;

(2) Fitted with a discharge hose of adequate length to ensure overboard discharge. A portable pump must be capable of dewatering each space it serves at a rate of at least 2 inches (51 millimeters) of water depth per minute; and

(3) Capable of being quickly and efficiently attached to the vessel's fixed bilge suction main or discharge piping (such as with "camlocks", etc.) for alternate emergency use.

(d) Except where an individual pump is provided for a separate space or for a portable pump, each individual bilge suction line must be provided with a stop valve at the manifold and a check valve at some accessible point in the bilge line to prevent unintended flooding of a space.

(e) Each bilge suction line and dewatering system must be fitted with a suitable strainer to prevent clogging of the suction line. Strainers must have an open area of not less than three times the open area of the suction line.

(f) Except for a fire pump required by 46 CFR 28.820, a bilge pump may be used for other purposes.

(g) Each vessel must comply with the oil pollution prevention requirements of 33 CFR parts 151 and 155.

§ 28.820 Fire pumps, fire mains, fire hydrants, and fire hoses.

(a) Each vessel must be equipped with a portable fire pump and a self-priming, power driven fire pump connected to a fixed piping system.

(1) The fixed fire pump must be capable of delivering an effective stream of water from a hose connected to the highest outlet. It must have a minimum capacity of 50 gallons per minute at a pressure of not less than 60 pounds per square inch at the pump outlet. If multiple pumps are installed, they may be used for other purposes provided at least one pump is kept available for use on the fire system at all times.

(2) The portable fire pump must have a minimum capacity of 9500 gallons per hour and be capable of being connected to National Standard Fire Hose of the size utilized on board the vessel. A single portable pump carried to satisfy the bilge system requirements of § 28.815(c) may also satisfy the requirements of this section.

(b) All parts of the firemain located on exposed decks shall either be protected against freezing or be fitted with both cut-out and drain valves.

(c) Each vessel must have a sufficient number of fire hydrants to reach any part of the vessel using a single length of hose.

(d) Each fire hydrant must have at least one length of fire hose connected to the outlet at all times, a spanner, and a hose rack or other device for stowing the hose at all times.

(e) Each length of fire hose must be a minimum of 1½" diameter lined commercial fire hose and be fitted with a nozzle made of corrosion resistant material capable of providing a solid stream and a spray pattern. Firehose shall not be used for any other purpose other than fire extinguishing, drills, and testing.

§ 28.825 Excess fire detection and protection equipment.

In lieu of § 28.155, each vessel to which this subpart applies must meet the following requirements:

(a) Installation of fire detection and protection equipment in excess of that required by the regulations in this subpart is permitted provided that the excess equipment does not endanger the vessel or individuals on board in any way. The excess equipment must, at a minimum, be listed and labeled by an

independent, nationally recognized testing laboratory and be in accordance with an appropriate industry standard for design, installation, testing, and maintenance.

(b) An existing fixed gas fire extinguishing system that is in excess of the required fire protection equipment required by subparts A, B, and C of this part, may remain in place and continued in service as long as all parts of the system are maintained in good condition to the satisfaction of the Coast Guard Representative, and subject to the following:

(1) A fixed fire extinguishing system capable of automatic discharge upon heat detection, may only be installed in a normally unoccupied space. For the purpose of this section, the machinery space aboard a fish tender operating in the Aleutian trade is considered occupied.

(2) A fixed fire extinguishing system must:

(i) Be capable of manual actuation from outside the space protected;

(ii) Produce an audible alarm to indicate the discharge of the extinguishing agent for 20 seconds before the agent is released into the space;

(iii) The branch line valves of all fire extinguishing systems shall be plainly and permanently marked indicating the spaces serviced;

(iv) The control cabinets or spaces containing valves or manifolds for the various fire extinguishing systems shall be distinctly marked in conspicuous red letters at least 2 inches high:

"STEAM FIRE APPARATUS"
"CARBON DIOXIDE FIRE APPARATUS"
"FOAM FIRE APPARATUS", or
"WATER SPRAY FIRE APPARATUS" as the case may be;

(v) Instructions for the operation of the system must be located in a conspicuous place at or near all pull boxes, stop valve controls, and in the agent storage space;

(vi) If the space or enclosure containing the supply or controls is to be locked, a key to the space or enclosure shall be in a break-glass-type box conspicuously located adjacent to the opening, and;

(vii) Be equipped with a sign at the alarm stating: "WHEN ALARM SOUNDS—VACATE AT ONCE. CARBON DIOXIDE BEING RELEASED", or list other fire extinguishing agent.

(3) Any modification, alteration, or new installation of a fixed gas fire extinguishing system must meet the additional requirements of subpart D of this part.

§ 28.830 Fire detection system.

(a) Each accommodation space must be equipped with an independent modular smoke detector or a smoke actuated fire detecting unit installed in accordance with § 76.33 of this chapter.

(b) An independent modular smoke detector must meet UL 217 and be listed as a "Single Station Smoke Detector—Also Suitable for Use in Recreational Vehicles."

§ 28.835 Fuel systems.

(a) Portable fuel systems including portable tanks and related fuel lines and accessories are prohibited except where used for outboard engines or portable bilge/fire pumps.

(b) Each integral fuel tank must be fitted with a vent pipe connected to the highest point of the tank terminating in a 180 degree (3.14 radians) bend on a weather deck and be fitted with a flame screen.

(c) Test cocks must not be fitted to fuel oil tanks.

(d) Valves for removing water or impurities from diesel fuel oil systems will be permitted in the machinery space provided they are away from any potential source of ignition. Such valves shall be fitted with caps or plugs to prevent leakage.

(e) Oil piping drains, strainers and other equipment subject to normal oil leakage must be fitted with drip pans or other means to prevent oil draining into the bilge.

(f) All nonmetallic filters and strainers must be fitted with a metal shield attached to their base in such a way as to prevent direct flame impingement in the case of a fire.

(g) Shutoff valves shall be installed in the fuel supply piping lines, one as close to each tank as practicable, and one as close to each fuel pump as practicable. Valves shall be accessible at all times.

(h) Fuel oil piping subject to internal head pressure from diesel oil in a tank must be fitted with a positive shutoff valve, installed to close against the flow at the tank. This valve is to be capable of remote actuation from outside the space in which the tank/piping is located, accessible at all times, and suitably marked.

(i) Except as permitted in this paragraph (i), the fuel supply piping shall be of seamless steel, annealed seamless copper, brass, nickel copper, or copper nickel alloy having a minimum wall thickness of 0.035 inches (0.9 millimeters). Existing fuel oil piping may remain in service as long as it is serviceable to the satisfaction of the Coast Guard Representative. Any replacement, alterations, modifications

or new installations to the fuel oil piping system must be made in accordance with the material requirements of this section. A short length (no more than 30 inches, (762mm)), suitable metallic or nonmetallic flexible tubing or hose is permitted in the fuel supply line at or near the engine to prevent damage by vibration. If nonmetallic flexible hose is used it must:

(1) Not exceed the minimum length needed to allow for vibration;

(2) Be visible, easily accessible, and must not penetrate a watertight bulkhead;

(3) Be fabricated with an inner tube and outer-covering of synthetic rubber or other suitable material reinforced with wire braid;

(4) Be fitted with suitable, corrosion resistant, compression fittings; and

(5) Be installed with two hose clamps at each end of the hose, if designed for use with clamps. Clamps must not rely on spring tension and must be installed beyond the bead or flare or over the serrations of the mating spud, pipe, or hose fitting.

§ 28.840 Means for stopping pumps, ventilation, and machinery.

All electrically driven fuel oil transfer pumps, fuel oil unit and service pumps, and ventilation fans shall be fitted with remote controls from a readily accessible position outside of the space concerned so that they may be stopped in the event of fire occurring in the compartment in which they are located. These controls shall be suitably protected against accidental operation or tampering and shall be suitably marked.

§ 28.845 General requirements for electrical systems.

(a) Electrical equipment exposed to the weather or in a location exposed to seas must be waterproof or watertight, or enclosed in a watertight housing.

(b) Aluminum must not be used for current carrying parts of electrical equipment or wiring.

(c) As far as practicable, electrical equipment must not be installed in lockers used to store paint, oil, turpentine, or other flammable or combustible liquids. If electrical equipment, such as lighting, is necessary in these spaces, it must be explosion-proof or intrinsically safe.

(d) Explosion-proof and intrinsically safe equipment must meet the requirements of § 111.105 of this chapter.

(e) Metallic enclosures and frames of electrical equipment must be grounded.

§ 28.850 Main source of electrical power.

(a) Applicability: Each vessel that relies on electricity to power any of the following essential loads must have at least two electrical generators to supply:

(1) The propulsion system and its necessary auxiliaries and controls;

(2) Interior lighting;

(3) Steering systems;

(4) Communication systems;

(5) Navigation equipment and navigation lights;

(6) Fire protection or detection equipment;

(7) Bilge pumps; and

(8) General alarm system.

(b) Each generator must be attached to an independent prime mover.

§ 28.855 Electrical distribution systems.

(a) Each electrical distribution system which has a neutral bus or conductor must have the neutral bus or conductor grounded.

(b) A grounded electrical distribution system must have only one connection to ground. This ground connection must be at the switchboard.

§ 28.860 Overcurrent protection and switched circuits.

(a) Each power source must be protected against overcurrent. Overcurrent devices for generators must be set at a value not exceeding 115 percent of the generators full load rating.

(b) Except for a steering circuit, each circuit must be protected against both overload and short circuit. Each overcurrent device in a steering system power and control circuit must provide short circuit protection only.

(c) Each ungrounded current carrying conductor must be protected in accordance with its current carrying capacity by a circuit breaker or fuse at the connection to the switchboard or distribution panel bus.

(d) Each circuit breaker and each switch must simultaneously open all ungrounded conductors.

(e) The grounded conductor of a circuit must not be disconnected by a switch or an overcurrent device unless all ungrounded conductors of the circuit are simultaneously disconnected.

(f) Navigation light circuits must be separate, switched circuits having fused disconnect switches or circuit breakers so that only the appropriate navigation lights can be switched on.

(g) A separate circuit with overcurrent protection at the main distribution panel or switchboard must be provided for each radio installation.

§ 28.865 Wiring methods and materials.

(a) All cable and wire must have insulated, stranded copper conductors

of the appropriate size and voltage rating of the circuit.

(b) Each conductor must be No. 22 AWG or larger. Conductors in power and lighting circuits must be No. 14 AWG or larger. Conductors must be sized so that the voltage drop at the load terminals is not more than 10 percent.

(c) Cable and wiring not serving equipment in high risk fire areas such as a galley, laundry, or machinery space must be routed as far as practicable from these spaces. As far as practicable, cables serving duplicated essential equipment must be separated so that a casualty that affects one cable does not affect the other. Existing cables and wires may remain as routed; however, any replacement wiring, new cabling and/or alterations must be routed as specified above.

(d) No unused or dead ended cables may remain after the permanent removal or alteration of an electrical device.

(e) Cable and wire for power and lighting circuits must:

(1) For circuits of less than 50 volts, meet 33 CFR 183.425 and 183.430; and
(2) For circuits of 50 volts or greater: (i) Meet sections 310-13 and 310-15 of NFPA 70, except that asbestos insulated cable and dry location cable must not be used;

(ii) Be listed by Underwriters Laboratories Inc. as UL Marine Boat or UL Marine Shipboard cable; or

(iii) Meet § 111.60 of this chapter.

(f) All metallic cable armor must be electrically continuous and grounded to the metal hull or the common ground point at each end of the cable run, except that final sub-circuits (those supplying loads) may be grounded at the supply end only.

(g) Wiring terminations and connections must be made in a fire retardant enclosure such as a junction box, fixture enclosure, or panel enclosure.

(h) Existing cable and wire may remain in place and continue in use as long as it is deemed serviceable to the satisfaction of Coast Guard Representative. Any new installation, replacement, modification or alteration must be done in accordance with the requirements of this section.

§ 28.870 Emergency source of electrical power.

(a) The following electrical loads must be connected to an independent emergency source of power capable of supplying all connected loads continuously for at least three hours:

(1) Navigation lights;
(2) Fire protection and detection systems;

(3) Communications equipment;

(4) General alarm system; and

(5) Emergency lighting;

(b) The emergency power source must be aft of the collision bulkhead, outside of the machinery space, and above the uppermost continuous deck.

(c) An emergency source of power supplied solely by storage battery must also meet the following requirements:

(1) Each battery must be a lead-acid or alkaline type and be able to withstand vessel pitch, vibration, roll, and exposure to a salt water atmosphere;

(2) A battery cell must not spill electrolyte when the battery is inclined at 30 degrees from the vertical;

(3) Each battery installation must be in a battery room, in a box on deck, or in a well ventilated compartment. The batteries must be protected from falling objects;

(4) Each battery tray must be secured to prevent shifting with the roll and pitch of the vessel and lined with a material that is corrosion resistant to the electrolyte of the battery;

(5) Each battery bank installation must be fitted with its own drip-proof charging system; and

(6) Each deck box used for battery storage must be weathertight, and have holes near the top to allow gas to escape.

§ 28.875 Radar, depth sounding, and autopilot.

(a) Each vessel must be fitted with a general marine radar system for surface navigation with a radar screen mounted at the operating station, and facilities on the bridge for plotting radar readings.

(b) Each vessel must be fitted with a suitable echo depth sounding device.

(c) Except as provided in 33 CFR 164.15, when the automatic pilot is used in areas of high traffic density, conditions of restricted visibility, and all other hazardous navigational situations, the master or person in charge shall ensure that:

(1) It is possible to immediately establish manual control of the unit's steering;

(2) A competent person is ready at all times to take over steering control; and

(3) The changeover from automatic to manual steering and vice versa is made by, or under the supervision of, the officer of the watch.

§ 28.880 Hydraulic equipment.

(a) Each hydraulic system must be so designed and installed that proper operation of the system is not affected by back pressure in the system.

(b) Piping and piping components must be designed with a burst pressure of not less than four times the system's maximum operating pressure.

(c) Each hydraulic system must be equipped with at least one pressure relieving device set to relieve at the system's maximum operating pressure.

(d) All material in a hydraulic system must be suitable for use with the hydraulic fluid used and must be of such chemical and physical properties as to remain ductile at the lowest operating temperature likely to be encountered by the vessel.

(e) Except for hydraulic steering equipment, controls for hydraulic equipment must be located where the operator has an unobstructed view of the hydraulic equipment and the adjacent working area. Protection shall be afforded to the operator of hydraulic equipment against falling or swinging objects and/or cargo.

(f) Controls for hydraulic equipment must be so arranged that the operator is able to quickly disengage the equipment in an emergency.

(g) Hydraulically operated machinery must be fail-safe or equipped with a holding device to prevent uncontrolled movement or sudden loss of control due to loss of hydraulic system pressure. A system is considered to be fail-safe if a component failure will result in a slow and controlled release of the load so as not to endanger personnel.

(h) Nonmetallic flexible hose assemblies must only be used between two points of relative motion, limited to the least amount of length that would afford maximum multidirectional movement of the equipment served.

(i) Hose end fittings must comply with SAE J1475, (Hydraulic Hose Fittings For Marine Applications). Field attachable fittings must be installed following the manufacturer's recommended practice (method).

(j) Nonmetallic flexible hose shall be marked with the manufacturer's name or trademark, type or catalog number and maximum allowable working pressure.

(k) Existing hydraulic piping, nonmetallic hose assemblies, and components may be continued in service so long as they are maintained in good condition to the satisfaction of the Coast Guard Representative, but all new installations, or replacements shall meet the applicable specifications or requirements of this section.

§ 28.885 Cargo gear.

(a) The safe working load (SWL) for the assembled gear shall be marked on the heel of each cargo boom, crane, or derrick. These letters and figures are to be in contrasting colors to the background and at least one inch in height. The SWL is construed to be the

load the gear is approved to lift, excluding the weight of the gear itself.

(b) All wire rope, chains, rings, hooks, links, shackles, swivels, blocks and any other loose gear used or intended to be used in cargo loading or unloading must be commensurate with the SWL rating in paragraph (a) of this section. This gear shall be visually inspected by the vessel's captain or his designee at frequent intervals, and in any event not less than once in each operating month.

(c) In addition to the inspection required in paragraph (b) of this section, a biennial thorough examination and proof load test, at a minimum of the SWL rating, shall be performed and witnessed by competent personnel. The proof load applied to the winches, booms, derricks, cranes and all associated gear shall be lifted with the ship's normal tackle with the boom or derrick at the lowest practicable angle. When the load has been lifted, it shall be swung as far as possible in both directions.

(d) After satisfactory completion of the tests and examinations required in paragraphs (b) and (c) of this section, all results and notations together with the date and location of each shall be maintained and available to Coast Guard representatives upon request.

§ 28.890 Examination and certification of compliance.

(a) At least once in every two years each ATA vessel must be examined for compliance with the regulations of this subchapter by the ABS, a similarly qualified organization, or a surveyor of an accepted organization.

(b) Each individual performing an examination under paragraph (a) of this section, upon finding the vessel to be in compliance with the requirements of this chapter, must provide a written certification of compliance to the owner or operator of the vessel.

(c) Each certification of compliance issued under paragraph (b) of this section must:

- (1) Be signed by the individual that performed the examination;
- (2) Include the name of the organization the individual performing the examination represents or the name of the accepted organization the individual belongs to; and
- (3) State that the vessel has been examined and found to meet the specific requirements of this chapter.

(d) A certification of compliance issued under paragraph (b) of this section must be retained on board the vessel until superseded.

(e) A copy of the certification of compliance issued under paragraph (b) of this section must be forwarded by the

organization under whose authority the examination was performed to the Coast Guard District Commander (Attention: Fishing Vessel Safety Coordinator) in charge of the district in which the examination took place.

§ 28.895 Survey and classification.

(a) Each vessel which undergoes a major conversion completed after July 27, 1990, must be classed by the ABS, or a similarly qualified organization.

(b) Each vessel which is classed under paragraph (a) of this section must:

(1) Have on board a certificate of class issued by the organization that classed the vessel.

(2) Meet all survey and classification requirements prescribed by the organization that classed the vessel.

§ 28.900 Loadlines.

(a) A fish tender vessel of not more than 500 gross tons, engaged in the Aleutian trade, with no load line assigned at any time prior to June 1, 1992 is not subject to the loadline provisions of 46 U.S.C. Chapter 51 if it is not on a foreign voyage and:

(1) was constructed, under construction, or under contract to be constructed as a fish tender vessel before January 12, 1980; or

(2) was converted for use as a fish tender vessel before January 1, 1983.

(b) Prior to January 1, 2003, this section does not apply to a fish tender vessel engaged in the Aleutian trade if the vessel:

(1) operated in that trade before September 8, 1990 and has not undergone a major conversion; or

(2)(i) Was purchased to be used in that trade before September 8, 1990, and entered into that service before June 1, 1992; and

(ii) Has not had a load line assigned at any time before November 16, 1990.

§ 28.905 Post accident inspection.

The owner of or master of the vessel shall ensure that a general or partial survey is performed by a Coast Guard Representative every time an accident occurs, a defect is discovered which affects the safety of the vessel or the efficacy or completeness of its lifesaving appliances, firefighting or other equipment, or whenever any repairs or alterations are made that affect the safety of the vessel. Repairs or alterations which affect the safety of the vessel include, but are not limited to: Replacement, repair, or refastening of deck or hull planking, plating, and structural members; repair of plate or frame cracks; damage repair or replacement, other than replacement in kind, of electrical wiring, fuel lines,

tanks, boilers and other pressure vessels, and steering, propulsion and power supply systems; alterations affecting stability; and repair or alteration of lifesaving, fire detecting, or fire extinguishing equipment. The survey shall be such as to insure that the necessary repairs or renewals have been effectively made, that the material and the workmanship of such repairs or renewals are in all respects satisfactory, and that the vessel complies in all respects with the regulations in this part.

§ 28.910 Repairs and alterations.

Repairs or alterations which affect the safety of the vessel including repairs or alterations to the hull, machinery, or equipment, may not be made unless the owner, operator or master notifies a Coast Guard Representative. Repairs or alterations which affect the safety of the vessel include, but are not limited to, the: Replacement, repair, or refastening of deck or hull planking, plating, and structural members; repair of plate or frame cracks; damage repair or replacement, other than replacement in kind, of electrical wiring, fuel lines, tanks, boilers and other pressure vessels, and steering, propulsion and power supply systems; alterations affecting stability; and repair or alteration of lifesaving, fire detecting, or fire extinguishing equipment.

§ 28.915 Manning and crew requirements.

(a) A fish tender vessel of not more than 500 gross tons and engaged in the Aleutian trade, when at sea, shall be manned with sufficient licensed individuals and crew members to maintain at least 3 separate watches. However, if a fish tender vessel of not more than 500 gross tons is a "qualified vessel", then the licensed individuals and crew members shall be divided, when at sea, into at least 2 separate watches.

(b) Machinery spaces of a fish tender engaged in the Aleutian trade, when at sea, must be under the control of an engineer designated as in charge.

(1) This designation shall be:

(i) In writing and signed by the owner, operator or master;

(ii) Entered in the ship's log if one is maintained; or

(iii) On the emergency instructions required by § 28.265.

(2) If a vessel does not have a designated engineer as part of its complement, then it must comply with the requirements of subpart D of this part in addition to the requirements of this subpart.

(c) At least 50 percent of the members of the deck crew on a fish tender vessel

engaged in the Aleutian trade must have merchant mariners documents endorsed for a rating of at least able seaman.

Dated: September 1, 1994.

J.F. McGowan,

*Captain, U.S. Coast Guard, Acting Chief,
Office of Marine Safety, Security and
Environmental Protection.*

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