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**DEPARTMENT OF HEALTH AND HUMAN SERVICES****45 CFR Part 74**

RIN 0991-AA56

**Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Non-Profit Organizations, and Commercial Organizations; and Certain Grants and Agreements With States, Local Governments and Indian Tribal Governments****AGENCY:** Department of Health and Human Services (HHS).**ACTION:** Final Rule including an Interim Final Rule for State-Administered Entitlement Programs.

**SUMMARY:** This final rule amends the HHS grants administration regulations to incorporate changes resulting from comments received in response to the publication of an interim rule implementing Office of Management and Budget (OMB) Circular A-110 on August 25, 1994. The revision of Section 74.1(a)(3), which applies this rule to the entitlement programs, remains an interim final rule until permanent policies are developed for these programs.

**EFFECTIVE DATES:** This final rule is effective April 22, 1996. The interim final rule revising § 74.1(a)(3) is effective April 22, 1996.

**FOR FURTHER INFORMATION CONTACT:** Charles Gale, Director, Division of Grants Policy and Oversight, HHS, Room 517-D, 200 Independence Ave. SW, Washington, DC 20201; telephone (202) 690-6377; fax (202) 690-8772; for the hearing impaired only: TDD (202) 690-6415.

**SUPPLEMENTARY INFORMATION:** The interim rule published by the Department on August 25, 1994 (59 FR 43754) provided recipients with substantial flexibility regarding OMB Circular A-110. This flexibility included, for example, declining to exercise the authority to require prior approval for percentage budget transfers (Circular A-110, Section \_\_\_\_\_.25(f)), declining to exercise the authority to require prior approval for fund transfers between direct and indirect costs (Circular A-110, Section \_\_\_\_\_.25(c)(5)), and declining to exercise the authority to require a notice of Federal interest in equipment

(Circular A-110, Section \_\_\_\_\_.37). This final rule continues that flexibility.

The Department received comments on the interim rule from several organizations representing the grantee community and from within HHS. Organizations commenting included community action agencies, community health centers, universities, State governments, law firms, and firms of certified public accountants. Many comments were supportive of HHS' implementation of OMB Circular A-110. All comments were considered in developing these final amendments.

The following section presents a summary of the comments, grouped by subject, and a response to each. Whenever possible we have cited the specific provision under consideration.

**General**

*Comment:* HHS should control the use of policy options by HHS awarding agencies. (For example, the choice of how program income shall be used under particular grants may be determined by HHS awarding agencies pursuant to Section 74.24(b).)

*Response:* We believe the regulation strikes an appropriate balance between providing overall HHS uniformity, and giving flexibility to HHS awarding agencies, particularly in that HHS awarding agencies must operate within the requirements of the new rule in exercising their options.

*Comment:* The definition of "Federal share" includes property improved with Federal funds. Do not apply the Federal share requirement to property improved with Federal funds.

*Response:* We do not agree. Improvement of property with Federal funds creates a Federal interest in the same way as methods of financing property with Federal funds creates a Federal interest. (Section 74.2)

*Comment:* The definition of "Federal share" includes "improvement expenditures." Define "improvement."

*Response:* "Improvement" needs no special definition because this is not a specialized use of the term. Only the ordinary, common sense meaning is intended. (Section 74.2)

*Comment:* The definition of "Federal share" discusses property acquired on an amortized basis. Give examples of the Federal share on an amortized basis.

*Response:* We have dropped that addition to the definition in order to avoid any implication of a change in the basic definition. It was not intended to alter the definition. The Federal share of property acquired on an amortized basis is determined in the same way as the Federal share of any other property. (Section 74.2)

*Comment:* The external policy issuances of HHS awarding agencies should be rescinded.

*Response:* There is no need to rescind HHS agencies' policy issuances. In many cases those issuances provide helpful explanations of HHS policy as it applies to special situations. Provisions of those issuances which conflict with this regulation, if any, are superseded. (Section 74.3)

*Comment:* Deviations from the Part 74 rules, in individual cases, should be approved at the HHS level, rather than by the HHS awarding agencies.

*Response:* We do not agree. HHS agencies make thousands of awards each year. It is not administratively feasible to route all individual cases to a central office. It would entail unacceptable delays for recipients. (Section 74.4)

*Comment:* We would hope that the new rule continues to exempt block grants and other grants and subgrants covered by 45 CFR Part 92.

*Response:* Part 74 applies to subawards made by State and local governments under 45 CFR Part 92 when those subawards are made to organizations covered by Part 74. Part 74 does not apply to subawards under block grants covered by 45 CFR Part 96. We have amended the text to make it clear that it does not apply to block grants. (Section 74.5(a)(1))

*Comment:* May a recipient impose special conditions on a subrecipient as it deems necessary or appropriate? For example, may a recipient insist on obtaining title when a subrecipient purchases equipment?

*Response:* A recipient may impose special conditions on a subrecipient provided the special conditions are consistent with the provisions of this regulation. Rules which apply to recipients flow down also to subrecipients, as provided in Section 74.5. When a subrecipient purchases equipment, the subrecipient retains title subject to the recipient's right to require transfer under Section 74.34(h).

**Pre-Award Requirements**

*Comment:* Why was the previous subpart E, Waiver of Single State Agency Requirements, dropped from the regulation?

*Response:* Subpart E was dropped from the interim final because it was decided that it would be better placed in the individual program regulations. However, in recognition of its placement in Part 74 for many years, we have now concluded it should be retained in this regulation as a matter of general information. Accordingly, we

have added the waiver provision at Section 74.1(a)(3).

*Comment:* The circumstances for imposing special conditions should be limited to violations of statutory and regulatory conditions.

*Response:* We do not agree. In addition to violations of statutory and regulatory conditions, Section 74.14(a) lists other situations which we believe warrant special conditions.

#### Post-Award Requirements

*Comment:* Allow recipients to request advances when their cash declines to a percentage of their monthly budget.

*Response:* We do not agree. A percentage rule would allow recipients to request advances, in some cases, before they are actually needed. (Section 74.22(g))

*Comment:* Relax the requirement for insured bank accounts for certain days, such as payroll days, when cash balances are temporarily higher than the amount covered by Federal Deposit Insurance.

*Response:* The insured account requirement says "whenever possible." This covers situations, as described above, where recipients can justify that compliance is not possible. (Section 74.22(i)(2))

*Comment:* Do not apply the requirement for return of interest earned on advance payments to the period between deposit of the funds in the recipient's bank, and their disbursement by the recipient.

*Response:* We do not agree. This is precisely the period that the interest-return requirement was designed to cover. (Section 74.22(k))

*Comment:* Correct the reference to "paid fringe benefits" in the discussion of volunteer services.

*Response:* We agree. We have amended the last sentence of section 74.23(d) to read "fringe benefits consistent with those paid \* \* \*."

*Comment:* Do not require that recipients use the deductive alternative for program income in cases where the HHS awarding agency does not specify which alternative to use.

*Response:* We do not agree. Not all Federally-supported projects are suitable for expansion with additional funds from program income. (Section 74.24(d))

*Comment:* Delete the requirement that recipients use the deductive alternative for any income that exceeds the amount authorized by the HHS awarding agency for the recipient to use under the additive or cost-sharing alternatives.

*Response:* We do not agree. Not all Federally-supported projects are suitable for unlimited expansion with

additional funds from program income. (Section 74.24(c))

*Comment:* Budget revisions should be considered approved if the HHS awarding agency does not reply within 30 days.

*Response:* We do not agree. Occasionally it is not possible to reply in 30 days. This does not make the requested budget revision appropriate. (Section 74.25(i))

*Comment:* Do not impose OMB Circular A-133 audit requirements on commercial organizations because most are already audited in accordance with generally accepted auditing standards (GAAS).

*Response:* We have revised section 74.26(a) to add new paragraphs (2) and (3) to give commercial organizations which receive annual HHS awards that exceed the OMB Circular A-133 audit threshold the option of either a Circular A-133 audit or a financial related audit of HHS awards in accordance with Government Auditing Standards (GAS). However, an audit performed in accordance with GAAS alone can not be used as a substitute. (Proposed revisions to OMB Circular A-133 (60 FR 14594) set the audit threshold at \$300,000).

*Comment:* Amend the real property disposition rules to authorize waiver of the recipient's requirement to reimburse the Federal Government if the property has been used for its authorized purpose for the period, usually 20 years, specified in the conditions of the award. (Comment from an HHS awarding agency.)

*Response:* Since the commenter's objection can be accomplished in a particular program through OMB Circular A-110's deviations procedures, we see no reason to amend the real property disposition rules. (Section 74.32(c))

*Comment:* When real property is sold, the Federal share should be based on the proceeds of sale rather than the fair market value.

*Response:* We do not agree. In order for the Federal Government to equitably share in the appreciation or depreciation of real property acquired with Federal funds, the Federal Government's share must be based on the current fair market value. (Section 74.32(c)(2))

*Comment:* Federally-furnished equipment should be included in the provisions for Federally-owned equipment.

*Response:* Federally-owned equipment includes Federally-furnished equipment. (Section 74.33)

*Comment:* Restore Circular A-110's introductory language in the provisions on exempt property.

*Response:* We have amended section 74.33(b) to reference 31 U.S.C. 6306, which authorizes HHS to vest title to tangible personal property in certain specified organizations conducting scientific research.

*Comment:* In determining equipment's value for disposition purposes, "imputed undepreciated value" should be an acceptable alternative to the regulation's "current fair market value."

*Response:* We do not agree. In our view, current fair market value is a more accurate measure of value. (Section 74.34)

*Comment:* The prohibition on use of equipment to provide services for a fee that is less than that charged by private companies should be limited to services other than those for which the award was made.

*Response:* The prohibition does not apply to the activities for which the award was specifically made, because the award was statutorily authorized for that purpose, e.g., the provision of health care under an award to a community health center. (Section 74.34(b)(1))

*Comment:* The statement that property shall be held in "trust" for the award's beneficiaries, and that the recipient shall record "liens" should be deleted because "trust" and "lien" have legal meanings that go beyond the requirements of the policy.

*Response:* We do not agree. We believe that the legal effect of "trusts" and "liens," as used in Section 74.37, is consistent with the requirements of the policy and that Federal interests are better protected by considering recipients as trustees for the beneficiaries of the program and by providing the Federal Government with a lien on the applicable property. (Section 74.37)

*Comment:* Delete the requirement that the recipient record a notice of Federal interest in property, unless the HHS awarding agency furnishes a computation of the Federal interest in each item of property.

*Response:* The recipient has much better information with which to calculate the Federal recipient shares of property than does the HHS awarding agency. In order to furnish such a computation to the recipient, HHS would have to impose a burdensome reporting requirement. There is no advantage to any of the parties in doing so. (Section 74.37)

*Comment:* Exempt small purchases from the requirement for a cost or price analysis.

*Response:* Although this is not a new requirement, OMB and the Federal

agencies will carefully review this requirement, especially for purchases involving \$2,500, or less, as revisions to OMB Circular A-110 are developed. Federal fiscal interests require, and the section on cost or price analysis is intended to assure, that each element of the cost of a recipient's procurement action is reasonable, allocable and allowable. Recipients, however, are provided considerable latitude in determining the appropriate form of the cost or price analysis, depending on the nature and size of the procurement action. (Section 74.45)

*Comment:* Do not require the contract clauses to be used with purchase orders that do not require a written contract.

*Response:* We do not agree. All of these clauses have been determined necessary to protect Federal interests, if not actually required by law, and therefore cannot be waived. (Section 74.48(e))

*Comment:* The requirement for reasonable access to the recipient's employees for purposes of discussing records should be rewritten to state that recipients do not have an affirmative obligation to produce an employee for an interview.

*Response:* We do not agree. Reasonable access to a recipient's personnel is necessary in order for the Federal Government to exercise fully its rights to undertake audits, examinations and similar procedures. Accordingly, recipients do have an affirmative obligation to provide that access. (Section 74.53(e))

*Comment:* Since Appendix G has been removed, do HHS awarding agencies continue to have authority to place pre-award approval requirements on procurements under the entitlement programs? (Comment from an HHS awarding agency.)

*Response:* Yes. OMB Circular A-110 does not preclude HHS awarding agencies from continuing their longstanding policies pertaining to pre-award approval and other requirements regarding procurements under the entitlement programs.

*Comment:* All enforcement actions should have a hearing on the record.

*Response:* Part 74 is not intended to establish any enforcement action hearing rights. The section on enforcement simply states that recipients and subrecipients will receive whatever opportunity for a hearing, appeal or other administrative proceeding that they are entitled to. (Section 74.62(b))

*Comment:* Allow subrecipients to appeal recipient enforcement actions to HHS.

*Response:* See the previous response. (Section 74.62(b))

#### Other Substantive Changes

Other substantive changes are as follows:

1. In section 74.1(a)(3) we have added references to section 74.23, Cost sharing or matching, and section 74.52, Financial reporting, to the list of sections of this part which do not apply to the entitlement programs. These have been approved deviations for many years, and were inadvertently left out of the interim regulation.

2. As we discussed in the preamble to the interim regulation (at 59 FR 43758), the applicability of this regulation to the entitlement programs is a temporary measure until new policies for these programs are developed. Therefore, section 74.1(a)(3) remains as interim final rule. We intend to work with the Department of Agriculture and OMB to review existing policies and promulgate new regulations regarding these programs.

3. We have added OMB Circular A-110's prohibitions on additional requirements, additional copies of payment reports, and additional prior approval requirements at sections 74.1(c), 74.22(m), and 74.25(l), respectively. We have included the Circular's references, at section \_\_\_\_\_.25 (d) and (i), with respect to approval of deviations by OMB, and specified that it refers to class deviations (74.25(l)). It is noted that individual case deviations do not require OMB approval. (Circular section \_\_\_\_\_.4.)

4. Because this regulation is applicable to some awards to governmental organizations (the entitlement programs), while OMB Circular A-110 is not, we have added a sentence to the definition of program income in section 74.2 to exempt taxes, special assessments, levies, and fines raised by governmental recipients from the definition of program income.

5. We have added a statement of policy that the Department will use its deviation authority to facilitate comprehensive or integrated service delivery or multi-source consolidated awards. A particularly appropriate example would be to facilitate Empowerment Zones or Enterprise Communities, and similar awards in communities that unsuccessfully applied for those designations. (HHS may not grant deviations in classes of cases without the approval of OMB.) (Section 74.4(b))

6. We have amended sections 74.5, 74.12, and 74.22 to exempt subawards from section 74.12, Forms for applying

for HHS financial assistance, and use of the forms prescribed in section 74.22, Payment. Recipients need not apply the forms in dealing with their subrecipients and should not impose more burdensome requirements on subrecipients.

7. In order to permit automated tracking of audits, we have amended section 74.26(d) to provide that audits shall include the recipient's Employer Identification Number, and to request that recipients submit a computer disk containing the audit report in addition to the paper copy.

8. We have amended section 74.34 to add a provision that formerly appeared at section 74.139(b)(2) and was inadvertently left out of the interim rule. That provision allows proceeds from equipment disposition to be used for project costs if the recipient's project is still receiving support from the same HHS program, and if the HHS awarding agency gives prior approval.

9. We have amended section 74.44(e)(2) to change the simplified acquisition threshold (formerly the "small purchase threshold") for recipient procurements from \$25,000 to \$100,000 as provided in the Federal Acquisition Streamlining Act of 1994. We have also added the \$100,000 reference to Section 74.48(b).

10. Two changes have been made to Appendix A as a result of the Federal Acquisition Streamlining Act, Public Law 103-355. The threshold for the requirement to include a provision for compliance with the Copeland "Anti-Kickback Act" (18 U.S.C. 874) was raised from \$2,000 to \$100,000. Also, the threshold for the requirement to include the provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) was raised to \$100,000.

Other editorial changes have been made to correct errors and improve clarity.

#### Regulatory Impact Analyses

##### *Executive Order 12866*

This rule was submitted to the Office of Management and Budget.

##### *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 it does not have a significant impact on a substantial number of small entities.

##### *Paperwork Reduction Act*

In keeping with the requirements of 44 U.S.C. 3504(h), the information

collection requirements in this rule have been approved by OMB as Standard Forms or HHS adaptations of Standard Forms with the following clearance numbers: SF-269: 0348-0039; SF-424: 0348-0043; and PMS 270 and 272: 0937-0200.

List of Subjects in 45 CFR Part 74

Accounting, Administrative practice and procedures, Grant programs-health, Grant programs-social programs, Grants administration, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: March 4, 1996.

Donna E. Shalala, Secretary of Health and Human Services.

Accordingly, the interim rule amending Part 74 of Title 45 of the Code of Federal Regulations, which was published at 59 FR 43754 on August 25, 1994, is adopted as final, except for Section 74.1(a)(3), which remains interim, with the following changes:

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

1. The authority citation for Part 74 is revised to read as follows:

Authority: 5 U.S.C. section 301; OMB Circular A-110; Appendix J is also issued under 31 U.S.C. section 7505.

2. Section 74.1 is amended by adding a new paragraph (c) to read as follows:

§ 74.1 Purpose and applicability.

\* \* \* \* \*

(c) HHS shall not impose additional or inconsistent requirements except as provided in §§ 74.4 and 74.14, or unless specifically required by Federal statute or executive order.

§ 74.2 [Amended]

3. Section 74.2 is amended by: a. Removing the last sentence in the definition of "Federal share." b. Adding a sentence at the end of the definition of "Program income" to read as follows:

§ 74.2 Definitions.

\* \* \* \* \*

Program income \* \* \* Furthermore, program income does not include taxes, special assessments, levies, and fines raised by governmental recipients.

\* \* \* \* \*

§ 74.3 [Amended]

4. Section 74.3 is amended by adding "Federal" before "statute".

5. Section 74.4 is amended by designating the current text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 74.4 Deviations.

(a) \* \* \*

(b) As a matter of Departmental policy, requests for individual case deviations will be considered favorably by HHS and its awarding agencies whenever the deviation will facilitate comprehensive or integrated service delivery, or multiple-source consolidated awards, unless the deviation would impair the integrity of the program.

§ 74.5 [Amended]

6. Section 74.5(a) introductory text is amended by adding "(except for § 74.12 and the forms prescribed in § 74.22)" after "this part".

7. Section 74.5(a)(1) is revised to read as follows:

§ 74.5 Subawards.

(a) \* \* \*

(1) Except for subawards under block grants (45 CFR part 96), all subawards received by institutions of higher education, hospitals, other nonprofit organizations, and commercial organizations from any recipient of an HHS award, including any subawards received from States, local governments, and Indian tribal governments covered by 45 CFR part 92; and

\* \* \* \* \*

8. Section 74.12 is amended by adding a new paragraph (e) to read as follows:

§ 74.12 Forms for applying for HHS financial assistance.

\* \* \* \* \*

(e) This section does not apply to applications for subawards.

§ 74.17 [Amended]

9. Section 74.17 is amended by removing the "HHS" preceding "official(s)" in the second sentence.

10. Section 74.22 is amended by adding a sentence at the end of paragraph (m) and a new paragraph (n) to read as follows:

§ 74.22 Payment.

\* \* \* \* \*

(m) \* \* \* HHS shall not require recipients to submit more than an original and two copies.

(n) Recipients and subrecipients are not required to use forms PMS-270 and 272 in connection with subaward payments.

11. Section 74.23(d) is amended by revising the last sentence to read as follows:

§ 74.23 Cost sharing or matching.

\* \* \* \* \*

(d) \* \* \* In either case, fringe benefits consistent with those paid that are reasonable, allowable, and allocable may be included in the valuation.

\* \* \* \* \*

12. Section 74.25 is amended in paragraph (c)(5) by revising "or costs" to read "of costs", and by adding a new paragraph (l) to read as follows:

§ 74.25 Revision of budget and program plans.

\* \* \* \* \*

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

13. Section 74.26 is amended by revising paragraphs (a) and (d) to read as follows:

§ 74.26 Non-Federal audits.

(a)(1) Recipients and subrecipients that are institutions of higher education, hospitals affiliated with institutions of higher education, and other nonprofit 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." (See Appendix I to this part.)

(2) Recipients and subrecipients that are commercial organizations have two options regarding audits:

(i) A financial related audit (as defined in the Government Auditing Standards, GPO Stock #020-000-00-265-4) of a particular award in accordance with Government Auditing Standards, in those cases where the recipient receives awards under only one HHS program; or, if awards are received under multiple HHS programs, a financial related audit of all HHS awards in accordance with Government Auditing Standards; or

(ii) An audit that meets the requirements contained in OMB Circular A-133.

(3) Commercial organizations that receive annual HHS awards totaling less than OMB Circular A-133's audit requirement threshold are exempt from requirements for a non-Federal audit for that year, but records must be available for review by appropriate officials of Federal agencies.

\* \* \* \* \*

(d)(1) All copies of audit reports required by this section shall be submitted to: Department of Health and Human Services, Office of Inspector

General, National External Audit Review Center, Lucas Place, Room 514, 323 West 8th Street, Kansas City, MO 64105.

(2) The HHS Office of Inspector General will distribute copies as appropriate within HHS. Recipients, therefore, are not required to send their audit reports to any other HHS officials. Recipients shall provide their Employer Identification Numbers (EIN) on the cover page of reports and submit along with the printed reports a computer disk containing the entire contents of the audit report a computer disk containing the entire contents of the audit report or at least the information in the report relating to HHS awards.

14. Section 74.33(b) is amended by adding two sentences at the beginning of the paragraph to read as follows:

**§ 74.33 Federally-owned and exempt property.**

\* \* \* \* \*

(b) For research awards to certain types of recipients, 31 U.S.C. 6306 authorizes HHS to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal government and under conditions that HHS considers appropriate. Such property is "exempt property." \* \* \*

15. Section 74.34 is amended by adding a new paragraph (g)(4) to read as follows:

**§ 74.34 Equipment.**

\* \* \* \* \*

(g) \* \* \*

(4) If the recipient's project or program for which or under which the equipment was acquired is still receiving support from the same HHS program, and if the HHS awarding agency approves, the net amount due may be used for allowable costs of that project or program. Otherwise the net amount must be remitted to the HHS awarding agency by check.

\* \* \* \* \*

**§ 74.35 [Amended]**

16. Section 74.35(b)(2) is amended by adding the word "are" after "supplies".

**§ 74.44 [Amended]**

17. Section 74.44(a)(2) is amended by adding "recipient and the" before "Federal Government".

18. Section 74.44(e)(2) is amended by removing "small purchase threshold fixed at 41 U.S.C. 403(11) (currently \$25,000)" and replacing it with "simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently \$100,000)".

**§ 74.48 [Amended]**

19. Section 74.48(b) is amended by removing "small purchase threshold" and replacing it with "simplified acquisition threshold (currently \$100,000)".

**§ 74.81 [Amended]**

20. Section 74.81 is amended by adding "Transfer" after "Technology".

**§ 74.90 [Amended]**

21. Section 74.90(d) is amended by adding "the office responsible for awarding agency preliminary appeal process or, where none," after "e.g.,".

**Appendix A to Part 74 [Amended]**

22. Paragraph 2 of Appendix A is amended by removing "\$2,000" and replacing it with "\$100,000".

23. Paragraph 4 of Appendix A is amended by removing "\$2,000 for construction contracts and in excess of \$2500" and replacing it with "\$100,000 for construction contracts and".

24. Section 74.1(a)(3) is amended as an interim final rule by revising interim paragraph (a)(3) to read as follows:

**§ 74.1 Purpose and applicability.**

(a) \* \* \*

(3) HHS grants and agreements, and any subawards under such grants and agreements, awarded to carry out the entitlement programs identified at 45 CFR Part 92, § 92.4(a)(3), (a)(7), and (a)(8), except that §§ 74.12, 74.23, 74.25, and 74.52 of this part do not apply. Under these programs, requests to HHS from Governors or other duly constituted State authorities for waiver of single State agency requirements in accordance with 31 U.S.C. 6501-6508 will be given expeditious handling. Whenever possible, such requests will be granted.

\* \* \* \* \*

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**OFFICE OF PERSONNEL MANAGEMENT**

**45 CFR Part 801**

**Voting Rights Program**

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is establishing a new office for filing applications or complaints under the Voting Rights Act of 1965, as amended. This designation is necessary to enforce the voting

guarantees of the Fourteenth and Fifteenth amendments to the Constitution. This amendment establishes Alameda County, California, as a new office for filing applications or complaints.

**DATES:** This rule is effective March 23, 1996. In view of the need for its publication without an opportunity for prior comment, comments will still be considered. To be timely, comments must be received on or before April 22, 1996.

**ADDRESSES:** Send or deliver comments to Barbara Matthews-Beck, Attorney, Office of Personnel Management, Room 7F10, 1900 E Street NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:**

Barbara Matthews-Beck, (202) 606-1700.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Settlement Agreement and Order in *United States of America v. Alameda County, California, et al.*, C.A. No. 95-1266 (N.D. Cal. January 22, 1996), Alameda County has been designated as an additional examination point under the provisions of the Voting Rights Act of 1965, as amended. This designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973d, OPM will appoint Federal Examiners to review the qualifications of applicants to be registered to vote and Federal observers to observe local elections.

Under § 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of OPM's legal responsibilities under 42 U.S.C. § 1973e(a) and other parts of the Voting Rights Act of 1965, as amended, which require OPM to publish counties certified by the U.S. Attorney General and locations within these counties where citizens can be federally listed and become eligible to vote, and where Federal observers can be sent to observe local elections.

Under § 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately in view of the pending election to be held in the subject county, where Federal observers will observe the election under the authority of the Voting Rights Act of 1965, as amended.