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# PART 3010 [RESERVED]

# PART 3011—AVAILABILITY OF INFORMATION TO THE PUBLIC

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AUTHORITY: 5 U.S.C. 301 and 522; 7 CFR 1.3.

SOURCE: 54 FR 51869, Dec. 19, 1989, unless otherwise noted.

## § 3011.1 General statement.

This part is issued in accordance with 7 CFR 1.3 of the Department of Agriculture regulations governing the availability of records (7 CFR 1.1—1.23 and Appendix A) under the Freedom of Information Act (5 U.S.C. 552, as amended). These regulations supplement the Department's regulations by providing guidance for any person wishing to request records from the Office of Finance and Management (OFM).

## § 3011.2 Public inspection and copying.

(a) *Background.* 5 U.S.C. 552(a)(2) requires each agency to maintain and make available for public inspection and copying certain kinds of records.

(b) *Procedure.* To gain access to OFM records that are available for public inspection, contact the Freedom of Information Act Officer by writing to the address shown in § 3011.4(b) of this title.

## § 3011.3 Indexes.

5 U.S.C. 552(a)(2) also requires that each agency maintain and make available for public inspection and copying current indexes providing identifying information for the public with regard to any records which are made available for public inspection and copying. OFM does not maintain any materials within the scope of these requirements.

## § 3011.4 Initial requests for records.

(a) *Background.* The Freedom of Information Act Officer is authorized to:

(1) Grant or deny requests for OFM records,

(2) Make discretionary release of OFM records when the benefit to the public in releasing the document outweighs any harm likely to result from disclosure,

(3) Reduce or waive fees to be charged where determined to be appropriate.

(b) *Procedures.* This part provides the titles and mailing address of officials who are authorized to release records to the public. The normal working hours of these offices are 8:30 a.m. to 5:00 p.m., local time, Monday through Friday, excluding holidays, during which public inspection and copying of certain kinds of records is permitted. Persons wishing to request records from the Office of Finance and Management may do so by submitting each initial written request for OFM records to the appropriate OFM official shown below:

(1) For records held at the Washington, DC Headquarters units, submit initial requests to the Freedom of Information Act Officer, Office of Finance and Management, USDA, 14th and Independence Ave., SW., Room 117–W, Administration Building, Washington, DC 20250–9000.

(2) For records held at the National Finance Center in New Orleans, Louisiana, submit initial requests to the Freedom of Information Act Officer, National Finance Center, OFM, USDA, 13800 Old Gentilly Road, Building 350, (P.O. Box 60,000, New Orleans, LA 70160), New Orleans, Louisiana 70129.

If the requester is unable to determine the official to whom the request should be addressed, it should be submitted to the Headquarters Freedom of Information Act Officer who will refer such requests to the appropriate officials.

## § 3011.5 Appeals.

Any person whose initial request is denied in whole or in part may appeal that denial, in accordance with 7 CFR 1.6(e) and 1.8, to the Director, Office of Finance and Management, USDA, Room 117–W, Administration Building, 14th and Independence Ave., Washington, DC 20250–9000.

## § 3011.6 Fee schedule.

Departmental regulations provide for a schedule of reasonable standard charges for document search and duplication. See 7 CFR 1.2(b). Fees to be

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APPENDIX A TO PART 3015—DEFINITIONS

APPENDIX B TO PART 3015—OMB CIRCULAR A–128, ''AUDITS OF STATE AND LOCAL GOVERNMENTS''

AUTHORITY: 5 U.S.C. 301, Subpart I, 31 U.S.C. 7505, unless otherwise noted.

SOURCE: 46 FR 55639, Nov. 10, 1981, unless otherwise noted.

## Subpart A—General

### §3015.1 Purpose and scope of this part.

(a)(1) This part establishes USDA-wide uniform requirements for the administration of open-ended entitlement grants and specifies the set of principles for determining allowable costs under USDA grants and cooperative agreements to State and local governments, universities, non-profit and for-profit organizations as set forth in OMB Circulars A–87, A–21, A–122, and 48 CFR 31.2, respectively. This Part also contains the general provisions that apply to all grants and cooperative agreements made by USDA.

(2) Additionally, this part establishes uniform audit requirements for State, local, and Indian Tribal governments pursuant to the Single Audit Act of 1984 and OMB Circular A–128, intergovernmental review provisions required by Executive Order 12372 for any programs listed in the FEDERAL REGISTER as covered, and policy on competition in awarding discretionary grants and cooperative agreements.

(3) Rules for nonentitlement grants and cooperative agreements to State and local governments are found in part 3016.

(4) Rules for nonentitlement grants and cooperative agreements to institutions of higher education, hospitals, and other non-profit organizations are found in part 3019.

(b) These rules supersede and take precedence over any individual USDA agency regulations and directives dealing with the administration of grants and cooperative agreements to the extent such regulations and directives are inconsistent with this part, unless such inconsistency is based on a statutory provision or an exception has been obtained from OMB. (See §3015.3.) Definitions for the terms used in this part are set forth in Appendix A. Definitions for the implementation of standard audit requirements for State and local governments and Indian Tribal governments are contained in Subpart I—Audits.

(c) The purpose of this part is to simplify, standardize, and improve the administration of USDA grants and cooperative agreements.

(d) Responsibility for developing and interpreting the material for this part and in keeping it up-to-date is assigned to the Office of the Deputy Director, Finance, a component of the Office of Operations and Finance (O&F), which reports to the Assistant Secretary for Administration.

[46 FR 55639, Nov. 10, 1981, as amended at 53 FR 8043, Mar. 11, 1988; 60 FR 44124, Aug. 24, 1995]

### §3015.2 Applicability.

(a) *Grants and cooperative agreements.* This part applies to USDA grants and cooperative agreements. For each substantive provision in this part, either the words of the provision itself or other words in the same subpart tell whether the provision applies to subgrants. Exemptions to this part may be applicable to certain kinds of recipients. (See paragraph (d) of this section.)

(b) *Terminology applicable to this part.* This part's substantive rules are the same for grants and cooperative agreements. Many of the rules are also the same for subgrants. Therefore, certain simplified terminology is used in the text. Specifically in all portions of this part:

(1) Each provision that applies to *grants* also applies to *cooperative agreements,* even though the latter term does not appear in the provisions.

(2) Each provision that applies to *recipients of grants* applies to *recipients of cooperative agreements,* even though the latter term does not appear in the provision.

(3) The term *recipient* refers equally to recipients of grants and recipients of cooperative agreements.

(4) The term *awarding agency* refers equally to a USDA agency that awards a grant and to one that awards a cooperative agreement.

(5) The term *subgrant* refers equally to certain awards under grants and to the same kinds of awards under cooperative agreements.

(c) *Public institutions of higher education and hospitals.* Grants, cooperative agreements and subgrants awarded to institutions of higher education and hospitals operated by a government are subject only to the provisions of this

part that apply to non-governmental organizations.

(d) *Recipients to which this part does not automatically apply.* This part does not automatically apply to the kinds of recipients listed below unless other conditions set forth in the grant, cooperative agreement, subgrant, or specific subpart in this part make all or specified portions apply:

(1) Foreign governments or organizations,

(2) International organizations, such as the United Nations,

(3) Agencies or instrumentalities of the Federal government, and

(4) Individuals.

(5) State and local governments, except open-ended entitlements to State and local governments.

(6) Institutions of higher education, hospitals and other non-profit organizations except open-ended entitlements to those entities.

(e) *Collaborative arrangements.* (1) Where permitted by the terms of the award, a recipient may enter into collaborative arrangements with other organizations to jointly carry out activities with grant or cooperative agreement funds. In this kind of situation, the arrangement between the recipient and each collaborating organization is subject to the rules in this part that apply to subgrants awarded by the recipients. (See the example shown in § 3015.195.)

(2) This paragraph (e) does not apply to arrangements where the organizations receive an award jointly. In this case, they are not a recipient and subrecipient but, as the award notice states, joint recipients.

[46 FR 55639, Nov. 10, 1981, as amended at 53 FR 8044, Mar. 11, 1988; 60 FR 44124, Aug. 24, 1995]

### § 3015.3 Conflicting policies and deviations.

(a) *Statutory provisions.* Federal statutes that apply to some USDA grant programs may contain provisions that conflict with this part. Those statutory provisions take precedence over this part.

(b) *Nonstatutory provisions.* USDA awarding agencies occasionally develop grant provisions that are inconsistent with this part. USDA attempts to keep these provisions to a minimum by internal procedures that require these provisions to be justified to appropriate officials of USDA and OMB. If the conflicting provisions are of long-term and general applicability, O&F may require that the awarding agency (1) publish the conflicting provision as a notice in the FEDERAL REGISTER and (2) give the public an opportunity to comment before making the regulations final.

(c) *Nonstatutory provisions-subgrants.* If a provision of a subgrant conflicts with this part, the recipient is considered as violating the provisions of the grant, unless the subgrant provision is authorized in writing, by the awarding agency.

(d) *OMB exceptions.* In some cases, OMB grants exceptions from the requirements of the Circulars, when permissible under existing laws. In those instances where a program receives an exception to a particular provision of a Circular, the exception takes precedence over this part.

### § 3015.4 Special restrictive terms.

(a) Occasionally an awarding agency, or a recipient awarding a subgrant, may find that a particular recipient:

(1) Is financially unstable,

(2) Has a history of poor performance, or

(3) Has a management system that does not meet the standards in this part.

In these cases the awarding agency may impose special conditions that are more restrictive than otherwise permitted by this part. If so, the awarding agency must tell the recipient in writing why it is imposing the special conditions and what corrective action is needed.

(b) At the time an awarding agency imposes a special grant condition under paragraph (a) of this section, the awarding agency, through O&F, shall notify OMB and other interested parties.

(c) At the time a recipient imposes a special restrictive subgrant condition under paragraph (a) of this section, it must notify the awarding agency, giving full particulars. The awarding agency, through O&F, shall then notify OMB and other interested parties.

(d) A special restrictive grant or subgrant condition under paragraph (a) of this section is considered consistent with this part.

## Subpart B—Cash Depositories

### §3015.10 Physical segregation and eligibility.

Except as provided in §3015.11, awarding agencies shall not impose grant or subgrant conditions which:

(a) Require the recipient to use a separate bank account for the deposit of grant or subgrant funds, or

(b) Establish any eligibility requirements for banks or other financial institutions in which recipients deposit grant or subgrant funds.

### §3015.11 Separate bank accounts.

A separate bank account shall be required when applicable letter of credit agreements provide that funds will not be drawn until the recipient's checks are presented to the bank for payment.

### §3015.12 Moneys advanced to recipients.

Any moneys advanced to recipients which are subject to the control or regulation of the United States or any of its officers, agents, or employees (public moneys as defined in Treasury Circular 176, as amended), must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage and the balance exceeding the FDIC coverage must be collaterally secured.

### §3015.13 Minority and women-owned banks.

Consistent with the national goal of expanding opportunities for minority business enterprises, recipients, and subrecipients are encouraged to use minority and women-owned banks. Upon request, awarding agencies will furnish a listing of minority and women-owned banks to recipients.

## Subpart C—Bonding and Insurance

### §3015.15 General.

In administering grants, subgrants, and cooperative agreements, recipients shall observe their regular requirements and practices with respect to bonding and insurance. No additional bonding and insurance requirements, including fidelity bonds, shall be imposed by the provisions of the grant, subgrant, or cooperative agreement except as provided in §§3015.16 through 3015.18.

### §3015.16 Construction and facility improvement.

(a) *Scope.* This section covers requirements for bid guarantees, performance bonds, and payment bonds when the recipients will contract or subcontract for construction or facility improvement (including alterations and renovations of real property) under a grant or subgrant.

(b) *Bids and contracts or subcontracts of $100,000 or less.* Unless otherwise required by law, the recipients shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds.

(c) *Bids and contracts or subcontracts exceeding $100,000.* Unless otherwise required by law, the recipient may follow its own regular policy and requirements if the USDA awarding agency has decided that the Federal government's interest will be adequately protected. If this decision has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to 5 percent of the bid price;

(2) A performance bond on the part of the contractor for 100 percent of the contract price; and

(3) A payment bond on the part of the contractor for 100 percent of the contract price.

### §3015.17 Fidelity bonds.

(a) If the recipient is not a unit of government, the awarding agency may require the recipient to carry adequate fidelity bond coverage where the absence of coverage for the grant-supported activity is considered as created an unacceptable risk.

(b) If the subrecipient is not a unit of government, the awarding agency or the recipient may require that the subrecipient carry adequate fidelity bond coverage where the absence of coverage for the subgrant-supported activity is

considered as creating an unacceptable risk.

### § 3015.18 Source of bonds.

Any bonds required under § 3015.16(c)(1) through (3) or § 3015.17 shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR part 223). A list of these companies is published annually by the Department of the Treasury in its Circular 570.

## Subpart D—Record Retention and Access Requirements

### § 3015.20 Applicability.

(a) This subpart applies to all financial records, supporting documents, statistical records and other records of recipients, which are:

(1) Required to be maintained by the provisions of a USDA grant or cooperative agreement, or

(2) Otherwise reasonably considered as pertinent to a USDA grant or cooperative agreement.

(b) This subpart does not apply to the records of contractors and subcontractors under grants, subgrants and cooperative agreements. For a requirement to place a provision concerning these records in certain kinds of contracts, see Subpart S of this part.

### § 3015.21 Retention period.

(a) Except as provided in paragraphs (b) and (c) of this section, records shall be kept for 3 years from the starting date specified in § 3015.22.

(b) If any litigation, claim, negotiation, audit or other action involving the records has been started before the end of the 3-year period, the records shall be kept until all issues are resolved, or until the end of the regular 3-year period, whichever is later.

(c) In order to avoid dual recordkeeping, awarding agencies may make special arrangements for recipients to keep any records which are continuously needed for joint use. The awarding agency shall request a recipient to transfer records to its custody when the awarding agency decides that the records possess long-term retention value. When the records are transferred to or maintained by the awarding agency the 3-year retention requirement shall not apply to the recipient.

(d) Records for nonexpendable property acquired in whole or in part, with Federal funds shall be retained for three years after its final disposition.

### § 3015.22 Starting date of retention period.

(a) *General.* The retention period starts from the date of the submission of the final expenditure report or, where USDA grant support is continued or renewed at annual or other intervals, the 3-year retention period for the records of each funding period starts on the day the recipient submits to USDA its annual or final expenditure report for that period. If an expenditure report has been waived, the 3-year retention period starts on the day the report would have been due. Exceptions to this paragraph are contained in paragraphs (b) through (d) of this section.

(b) *Equipment records.* The 3-year retention period for the equipment records required by Subpart R starts from the date of the equipment's disposition, replacement, or transfer at the direction of the awarding agency.

(c) *Records for income transactions after grant or subgrant support.* (1) In cases where USDA requires that program income (as defined in Appendix A) be applied to costs incurred after expiration or termination of grant or subgrant support, the 3-year retention period for these cost records starts from the end of the recipient's fiscal year in which the costs are incurred.

(2) Where USDA requires the disposition of copyright royalties or other program income earned after expiration or termination of grant or subgrant support, the 3-year retention period for those income records starts from the end of the recipient's fiscal year in which the income was earned. (See Subpart F, § 3015.44.)

(d) *Indirect cost rate proposals, cost allocation plans, etc.*—(1) *Applicability.* This paragraph applies to the following types of documents and their supporting records:

(i) Indirect cost rate computations or proposals;

(ii) Cost allocation plans; and

(iii) 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).

(2) *If submitted for negotiation.* If the Federal government requires submission of the proposal; plan, or other computation for negotiation of the rate chargeable for particular costs, then the 3-year retention period for the plan, proposal or other computation and the supporting records starts from the date of such submission.

(3) *If not submitted for negotiation.* If the Federal government does not require submission of the proposal, plan, or other computation for negotiation of the rate chargeable for particular costs, then the 3-year retention period for the proposal, plan, or other computation and the supporting records starts from the end of the fiscal year covered by such proposal, plan, or other computation.

### § 3015.23 Microfilm.

Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

### § 3015.24 Access to records.

(a) *Records of recipients.* USDA and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the recipient which are pertinent in a specific USDA award in order to make audit, examination, excerpts, and transcripts.

(b) *Records of subrecipients.* USDA and the Comptroller General of the United States, and the recipient, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the subrecipient which are pertinent to a specific USDA grant or cooperative agreement, in order to make audit, examination, excerpts, and transcripts.

(c) *Expiration of right of access.* The rights of access in this section shall not be limited to the required retention period but shall last as long as the records are kept.

### § 3015.25 Restrictions to public access.

Unless required by law, no awarding agency shall impose grant or subgrant conditions which limit public access to records covered by this subpart, except when the awarding agency determines that such records must be kept confidential and would have been excepted from disclosure pursuant to USDA's ''Freedom of Information'' regulations if the records had belonged to USDA (7 CFR 1.1–1.16).

## Subpart E—Waiver of "Single" State Agency Requirements

### § 3015.30 Waiver of "single" State agency requirements.

Section 204 of the Intergovernmental Cooperation Act of 1968 authorizes Federal agencies to waive ''single'' State agency requirements on request of the Governor or other duly constituted State authorities.

(a) *Approval authority.* The awarding agency has approval authority for waiver requests, and shall handle them as quickly as feasible. Approval should be given whenever possible.

(b) *Refusal procedures.* When it is necessary to refuse a request for waiver of the ''single'' State agency requirements under section 204, the awarding agency shall, through O&F, advise OMB that the request cannot be granted. Such advice should indicate the reasons for the denial of the request. Notification, through O&F, to OMB shall occur prior to informing the State of the refusal.

## Subpart F—Grant Related Income

### § 3015.40 Scope.

This subpart contains policies and requirements related to program income and interest and other investment income earned on advances of grant funds. Appendix A defines the term ''program income.'' There are five categories of program income covered in this subpart. Each is treated in a separate section. The categories are:

(a) General program income;

(b) Proceeds from sale of real property and from sale of equipment and supplies acquired for use;

(c) Royalties and other income earned from a copyrighted work;

(d) Royalties or equivalent income earned from patents or inventions; and

(e) Income after the period of grant or subgrant support not otherwise treated.

**§ 3015.41 General program income.**

(a) *Applicability*. This section applies to ''general program income'' as defined in Appendix A.

(b) *Use*. (1) General program income shall be retained by the recipient and used in accordance with one or a combination of the alternatives in paragraphs (c), (d), and (e) of this section, as follows: The alternative in paragraph (c) may always be used by recipients and must be used if neither of the other two alternatives is permitted by the provisions of the grant award. The alternatives in paragraph (d) or (e) of this section may be used only if expressly permitted by the provisions of the grant award. In specifying alternatives that may be used, the provisions of the grant award may distinguish between income earned by the recipient and income earned by subrecipients and between the sources, kinds, or amounts of income.

(2) The provisions of a subgrant award may restrict the use of general program income earned by the subrecipient to only one or some of the alternatives permitted by the provisions of the grant, but the alternative in paragraph (c) of this section shall always be permitted.

(c) *Deduction alternative*. (1) Under this alternative, the income is used for allowable costs of the project or program. If there is a cost-sharing or matching requirement, costs supported by the income may not count toward satisfying that requirement. Therefore, the maximum percentage of Federal cost-sharing is applied to the net amount determined by deducting the income from total allowable costs and third party in-kind contributions. The income shall be used for current costs unless the awarding agency authorizes the income to be used in a later period.

(2) To illustrate this alternative, assume a project in which the recipient incurs $100,000 of allowable costs and receives no third party in-kind contributions. If the recipient earns $10,000 in general program income and this alternative applies, that $10,000 must be deducted from the $100,000 before applying the maximum percentage of Federal cost-sharing. If that percentage is 90 percent, the most that could be paid to the recipient would therefore be $81,000 (90 percent times $90,000).

(d) *Cost-sharing or matching alternative*. (1) Under this alternative, the income is used for allowable costs of the project or program but, in this case, the costs supported by the income may count toward satisfying a cost-sharing or matching requirement. Therefore, the maximum percentage of Federal cost-sharing is applied to total allowable costs and third party in-kind contributions. The income shall be used for current costs unless the awarding agency authorizes its use in a later period.

(2) To illustrate this alternative, assume the same situation as in paragraph (c)(2) of this section. Under this alternative, the 90 percent maximum percentage of Federal cost-sharing would be applied to the full $100,000, and $90,000 could therefore be paid to the recipient.

(e) *Additional costs alternative*. Under this alternative, the income is used for costs which are in addition to the allowable costs of the project or program but which nevertheless further the objectives of the Federal statute under which the grant was made. Provided that the costs supported by the income further the broad objectives of that statute, they need not be of a kind that would be permissible as charges to Federal funds. Examples of purposes for which the income may be used are:

(1) Expanding the project or program.

(2) Continuing the project or program after grant or subgrant support ends.

(3) Supporting other projects or programs that further the broad objectives of the statute.

(4) Obtaining equipment or other assets needed for the project or program or for other activities that further the statute's objectives.

### § 3015.42 Proceeds from sale of real property and from sale of equipment and supplies acquired for use.

The following kinds of program income shall be governed by Subpart R of this part:

(a) Proceeds from the sale of real property purchased or constructed under a grant or subgrant.

(b) Proceeds from the sale of equipment and supplies created or purchased under a grant or subgrant and intended primarily for use in the grant or subgrant-supported project or program rather than for sale or rental.

### § 3015.43 Royalties and other income earned from a copyrighted work.

(a) This section applies to royalties, license fees, and other income earned by a recipient from a copyrighted work developed under the grant or subgrant. Income of that kind is covered by this section whether a third party or the recipient acts as the publisher, seller, exhibitor, or performer of the copyrighted work. In some cases the recipient incurs costs to earn the income but does not charge these costs to USDA grant funds, to required cost-sharing or matching funds, or to other program income. Costs of that kind may be deducted from the gross income in order to determine how much must be treated as program income.

(b) The provisions of the grant award govern the disposition of income subject to this section. If the provisions of the grant award do not treat this kind of income, there are no USDA requirements governing its disposition. A recipient is not prohibited from imposing requirements of its own on the disposition of this kind of income which is earned by its subrecipients provided those requirements are in addition to, and not inconsistent with, any requirements imposed by the provisions of the grant award.

### § 3015.44 Royalties or equivalent income earned from patents or from inventions.

Disposition of royalties or equivalent income earned on patents or inventions arising out of activities assisted by a grant or subgrant shall be governed by the provisions of the grant or subgrant agreement. If the agreement does not provide for the disposition of the royalties or equivalent income, the disposition shall be in accordance with the recipient's own policies.

### § 3015.45 Other program income.

(a) This section applies to program income not treated elsewhere in this part which subsequently results from an activity supported by a grant or subgrant but which does not accrue until after the period of grant or subgrant support. An example is proceeds from the sale or rental of a residual inventory of merchandise created or purchased by a grant-supported workshop during the period of support.

(b) The provisions of the grant award govern the disposition of income subject to this section. If the provisions do not treat this kind of income, there are no USDA requirements governing its disposition. A recipient may impose requirements of its own on the disposition of this kind of income which is earned by its subrecipients provided those requirements are in addition to and not inconsistent with any requirements imposed by the provisions of the grant award.

### § 3015.46 Interest earned on advances of grant funds.

(a) Except when exempted by Federal statute (see paragraph (b) of this section for the principal exemption), recipients shall remit to the Federal government any interest or other investment income earned on advances of USDA grant funds. This includes any interest or investment income earned by subrecipients and cost-type contractors on advances to them that result from advances of USDA grant funds to the recipient. Unless the recipient receives other instructions from the responsible USDA awarding agency, the recipient shall remit the amount due by check or money order payable to the awarding agency. This requirement may not be administratively waived.

(b) In accordance with the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213), States, as defined in the Act, shall not be accountable to the Federal government for interest or investment income earned by the State itself, or by its subrecipents, where

this income is attributable to grants-in-aid, as defined in the Act.[1]

(c) Recipients are cautioned that they are subject to the provisions of Subpart L for minimizing the time between the transfer of advances and their disbursement. Those provisions apply even if there is no accountability to the Federal government for interest or other investment income earned on the advances.

## Subpart G—Cost-Sharing or Matching

### § 3015.50 Scope.

This subpart contains rules reflecting Federal requirements for cost-sharing or matching. These rules apply whether cost-sharing or matching is required by Federal statute, awarding agency regulations, or by other provisions established by the specific grant agreement.

### § 3015.51 Acceptable contributions and costs.

A cost-sharing or a matching requirement may be satisfied after qualifications and exceptions are met in § 3015.52 and by satisfying either or both of the following:

(a) Allowable costs incurred by the recipient or by any subrecipient under the grant or subgrant. This includes allowable costs supported by non-Federal grants or by cash donations from non-Federal third parties. Allowable costs shall be determined in accordance with the cost principles set forth in Subpart T.

(b) The value of third party in-kind contributions applicable to the same period when a cost-sharing or matching requirement applies.

[1] ''State'' is defined in the Act to include any agency or instrumentality of a State, and the definition does not exclude a hospital or institution of higher education which is such an agency or instrumentality. ''Grant-in-aid'' is defined in the Act to exclude payments under research and development contracts or grants which are awarded directly and on similar terms to all qualifying organizations, whether public or private. (42 U.S.C. 4201)

### § 3015.52 Qualifications and exceptions.

(a) *Costs supported by other Federal grants.* (1) A cost-sharing or a matching requirement shall not be met by costs supported by another Federal grant, except as provided by Federal statute. This exception however, does not apply to costs supported by general program income earned from a contract awarded under another Federal grant.

(2) For the purpose of this part, funds provided under General or Countercyclical Revenue Sharing Programs (31 U.S.C. 1221 et seq. and 42 U.S.C. 6721 et seq.) are not considered Federal grants. Therefore, allowable costs supported by these funds may be used to satisfy a cost-sharing or a matching requirement.

(b) *Costs or contributions applied towards other Federal cost-sharing requirements.* Recipient costs or the value of third party in-kind contributions shall not count towards satisfying a cost-sharing or matching requirement of a USDA grant if they are or will be counted towards satisfying a cost-sharing or matching requirement of another Federal grant, a Federal procurement contract, or any other award of Federal funds.

(c) *Costs financed by general program income.* Costs financed by general program income as defined in Appendix A shall not count towards satisfying a cost-sharing or matching requirement of a USDA grant supporting the activity unless the provisions of the grant award expressly permit the income to be used for cost-sharing or matching purposes. (This is the alternative for use of general program income described in § 3015.41).

(d) *Services or property financed by income earned by contractors.* Contractors under a grant or subgrant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost-sharing or matching requirement unless other provisions of the grant award expressly permit this kind of income to be used to meet the requirement.

(e) *Records.* In order to count cost and third party in-kind contributions towards satisfying a cost-sharing or a matching requirement, there must be verification and accurate documentation from the records of recipients or cost-type contractors. These records shall show how the value placed on third party in-kind contributions was decided. Special standards and procedures for calculating these contributions are discussed in paragraph (f) of this section. Volunteer services, to the extent possible, shall be supported by the same pay procedures and rates employed by the organization when paying for similar work performed by its personnel.

(f) *Special standards for third party in-kind contributions*—(1) *Contributions to recipients or cost-type contractors.* A third party in-kind contribution to a recipient or cost-type contractor may count towards satisfying a cost-sharing or matching requirement only where, if the recipient or cost-type contractor were to pay for it, the payment would be an allowable cost.

(2) *Contributions to fixed-price contractors.* A third party in-kind contribution to a fixed-price contractor may count towards satisfying a cost-sharing or matching requirement only if it results in:

(i) An increase in the services or property provided under the contract (without additional cost to the recipient or subrecipient), or

(ii) A cost savings to the recipient or subrecipient.

### § 3015.53 Valuation of donated services.

(a) *Volunteer services.* Unpaid services provided to a recipient by an individual shall be valued at rates consistent with the rates normally paid for similar work in the recipient organization. If there is no similar work in the recipient organization, the rate of pay for volunteer services should be consistent with those regular rates paid for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(b) *Employees of other organizations.* When an employer, other than a recipient or cost-type contractor, furnishes the services of an employee without cost to perform the employee's normal line of work, the services shall be valued at the employee's regular rate of pay, exclusive of the employer's fringe benefits and overhead cost. If the services are in a different line of work, paragraph (a) of this section shall apply.

### § 3015.54 Valuation of donated supplies and loaned equipment or space.

(a) If a third party donates supplies, the contributions shall not exceed the cost of the supplies to the donor or the market value of the supplies, at the time of the donation, whichever is less.

(b) If a third party donates the use of equipment or space in a building but retains the title, the contribution shall be valued at the fair rental rate of the equipment or space.

### § 3015.55 Valuation of donated equipment, buildings, and land.

When a third party donates equipment, buildings or land, and the title is given to the recipient, the treatment of this donated property shall depend upon the purpose of the grant or subgrant as follows:

(a) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the recipient in acquiring property, such as equipment, buildings, and land, then the market value of that property at the time of donation may be counted as cost-sharing or matching.

(b) *Other awards.* If the nature of the grant or subgrant is not for the purpose of acquiring property, the following rules shall apply:

(1) If approval is obtained from the awarding agency, the market value at the time of donation of the equipment or buildings and the fair rental rate of the donated land may be counted as cost-sharing or matching. In the case of a subgrant, the provisions of the USDA grant should require that the approval be obtained from the awarding agency as well as the recipient. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost.

(2) If approval is not obtained under paragraph (b)(1) of this section, no amount shall be counted for donated land. Instead, only depreciation or use allowances may be counted for donated equipment and buildings and treated as costs incurred by the recipient. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in Subpart T of this part. They will thus be handled in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

### § 3015.56 Appraisal of real property.

In some cases, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the awarding agency must require that the market value or fair rental rate be set by an independent appraiser (or by a representative of the U.S. General Services Administration, if available) and that the value or rate be certified by a responsible official of the party to which the property or its use is donated. This requirement must also be imposed by the recipient on subgrants.

## Subpart H—Standards for Financial Management Systems

### § 3015.60 Scope.

This subpart contains standards for financial management systems of recipients. No additional financial management standards or requirements shall be imposed by awarding agencies. Awarding agencies will, however, provide recipients with suggestions and assistance on establishing or improving financial management systems when such assistance is needed or requested.

### § 3015.61 Financial management standards.

The following standards shall be met by recipients and subrecipients in managing their financial management system.

(a) *Financial reporting.* Complete, accurate, and current disclosure of the financial results of each USDA sponsored project or program shall be made in accordance with the financial reporting requirements set forth in the grant or subgrant. When a USDA awarding agency requires reporting on an accrual basis, the recipient shall not be required to establish an accrual accounting system, but shall develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(b) *Accounting records.* The source and application of funds shall be readily identified by the continuous maintenance of updated records. Records, as such, shall contain information pertaining to grant or subgrant awards, authorizations, obligations, unobligated balances, assets, outlays, and income. When the recipient is a governmental entity, the records shall also contain liabilities.

(c) *Internal control.* Effective control over and accountability for all USDA grant or subgrant funds, real and personal property assets shall be maintained. Recipients shall adequately safeguard all such property and shall ensure that it is used solely for authorized purposes. In cases where projects are not 100 percent Federally funded, recipients must have effective internal controls to assure that expenditures financed with Federal funds are properly chargeable to the grant supported project.

(d) *Budgetary control.* The actual and budgeted amounts for each grant or subgrant shall be compared. If appropriate, or required by the awarding agency, financial information shall be related to performance and unit cost data. When unit cost data is required, estimates based on available documentation may be accepted whenever possible.

(e) *Advance payments.* There shall be specific procedures established to minimize the time elapsing between the advance of Federal grant or subgrant funds and their subsequent disbursement by the recipient. When advances are made by a letter of credit method, the recipients shall make drawdowns as close as possible to the time of making the disbursements. This same procedure shall be followed by recipients who advance cash to subrecipients to ensure that timely fiscal transactions

and reporting requirements are conducted.

(f) *Allowable costs.* Established procedures shall be used for determining the reasonableness, allowability, and allocability of costs in accordance with the cost principles prescribed by Subpart T of this part and the provisions of the grant award.

(g) *Source documentation.* Accounting records shall be supported by source documentation. These documentations include, but are not limited to, cancelled checks, paid bills, payrolls, contract and subgrant award documents.

(h) *Audit resolution.* A systematic method shall be employed by each recipient to assure timely and appropriate resolution of audit findings and recommendations.

## Subpart I—Audits

AUTHORITY: Single Audit Act of 1984, Pub. L. 98–502.

SOURCE: 51 FR 1486, Jan. 14, 1986, unless otherwise noted.

### § 3015.70 Audits of State, local and Indian Tribal governments.

(a) This subpart establishes audit requirements for State, local and Indian Tribal governments that receive USDA Federal assistance and defines Federal responsibilities for implementing and monitoring those requirements. Additionally, this subpart implements the audit requirements and policies for government organizations contained in the following documents, which are incorporated into this subpart by reference and/or as an Appendix.

(1) Single Audit Act of 1984, (Pub. L. 98–502);

(2) The Office of Management and Budget (OMB) Circular A–128, and any subsequent revisions;

(3) Standards for Audit of Governmental Organizations, Programs, Activities and Functions issued by the Comptroller General of the United States in 1981 (GAO Standards), and any subsequent revisions;

(4) Generally Accepted Auditing Standards issued by the American Institute of Certified Public Accountants (AICPA);

(5) AICPA Industry Audit and Accounting Guide, Audits of State and Local Governmental Units;

(6) Compliance Supplements for Single Audits of State and Local Governments issued by OMB in April 1985, and any subsequent revisions; and

(7) Federal cognizant agency assignments issued by OMB on October 6, 1980, and any subsequent revisions.

(b) All of the requirements contained in paragraphs (a)(1) through (5) must be met by a recipient before an audit can be accepted as a Federal audit by the respective cognizant agencies referenced in paragraph (a)(7). The auditor may use the Compliance Supplement for Single Audits of State and Local Governments, published by OMB, or ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual Federal programs.

### § 3015.71 Policy.

(a) OMB Circular A–128, included herein as Appendix B, establishes uniform audit requirements for State, local and Indian Tribal governments, or their subdivisions, that receive Federal financial assistance. The Circular requires recipients and subrecipients of Federal financial assistance to arrange for independent audits of financial operations, including compliance with certain provisions of Federal laws and regulations, and to assure that single audits are made in accordance with Circular A–128.

(b) A State, local, or Indian Tribal government which receives less than $25,000 in Federal assistance is exempt from the requirements contained herein, but shall have an audit made in accordance with State and local law or regulations for any fiscal year in which it receives less than $25,000 in Federal financial assistance.

(c) A single audit in accordance with Circular A–128 and this subpart shall be in lieu of any audit required under individual USDA Federal assistance programs. A single audit should provide USDA agencies with the information they need to carry out their responsibilities and they shall rely upon and use that information. Any additional

audits needed by USDA shall be conducted or arranged by the Office of Inspector General in such a way as to avoid duplication of effort. Audit requirements in USDA individual agency regulations and directives for assistance programs administered in cooperation with State, local, and Indian Tribal governments shall be limited to requiring compliance with OMB Circular A–128 and this subpart.

(d) State, local and Indian Tribal governments for which OMB has assigned USDA as the ''cognizant agency'' shall apply the audit requirements set forth in Circular A–128 and this subpart.

(e) State, local and Indian Tribal governments that receive financial assistance from USDA, and have been assigned a cognizant agency other than USDA, shall follow the audit requirements established by the respective cognizant agency. If the designated cognizant agency has not established Circular A–128 audit requirements, or if OMB has not designated a cognizant agency, those units of governments shall follow the audit requirements contained in Circular A–128, and this subpart.

**§ 3015.72 Definitions.**

(a) *Cognizant agency* means the Federal agency assigned by OMB to carry out the responsibilities described in OMB Circular A–128. Within USDA the Secretary has designated the Office of Finance and Management (OFM) as the *cognizant agency*. OFM further has the responsibility to delegate cognizant agency responsibilities to those USDA awarding agencies that provide the major of Federal funds or services to the recipient and to monitor the agencies implementation of the Single Audit Act of 1984 and OMB Circular A–128. In those instances where USDA is designated as the cognizant agency, the USDA Office of Inspector General (OIG) shall fulfill the responsibilities defined in § 3015.74 of this subpart.

(b) *OIG* means the Office of Inspector General, United States Department of Agriculture.

(c) *Regional Inspector General* means the OIG official in the United States Department of Agriculture who is responsible for audit-related matters in one of the designated regions covered by a Regional Audit Office.

(d) Other definitions applicable to this subpart are set forth in Appendix B.

**§ 3015.73 Audit arrangements and requirements.**

(a) *Arrangements.* (1) State, local and Indian Tribal governments shall use their own procedures to arrange for and prescribe the scope of independent audits, provided that such audits comply with the requirements set forth in this subpart and Circular A–128.

NOTE: It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work required by this subpart should be done in conjunction with those audits.

(2) In arranging for either single or additional audits of USDA programs, USDA awarding agencies and recipients shall coordinate proposed audit plans and related ducuments with the appropriate USDA Regional Inspector General prior to initiating the audit. The purpose of coordinating the proposed audit plans and related documents is to enable the Regional Inspector General to provide timely technical assistance and assure that satisfactory audit coverage in planned.

(3) Provisions shall be included in audit contracts requiring the audit organization to retain audit working papers and reports in accordance with § 3015.75(b).

(b) *Use of small and minority audit firms.* As set forth in Circular A–128, paragraph 19, small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts awarded to fulfill the audit requirements of Circular A–128 and this subpart.

(c) *Requirements*—(1) *Scope of audit.* (i) Each audit shall cover the entire operations of a State or local government or, at the option of government, it may cover departments, that agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year.

However, if a State or local government receives over $25,000 in General Revenue Sharing funds in a fiscal year, it shall have an audit of the entire organization. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

(ii) The single audit may exclude public hospitals and public colleges and universities. Such audits, if excluded from the scope of the single audit, shall be made in accordance with § 3015.77.

(iii) The audit shall determine and report in accordance with OMB Circular A–128 and § 3015.75.

(2) *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, USDA shall permit biennial audits, covering both years, if the government so requests. USDA shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning prior to January 1, 1987.

(3) *Internal control and compliance reviews.* Internal control and compliance reviews shall be conducted in accordance with OMB Circular A–128, paragraph 8.

(4) *Other testing.* The recipient's independent auditor is responsible for:

(i) Reviewing the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports;

(ii) Testing to determine whether these systems are functioning in accordance with prescribed procedures;

(iii) Commenting on the recipient's monitoring procedures, if warranted by the circumstances; and

(iv) Considering whether subrecipient audits require adjustment of the recipient's financial statements, footnote disclosure, or modification of the auditor's report.

(5) *Subrecipients.* Each State, local, or Indian Tribal government that receives Federal financial assistance and provides $25,000 or more of it in a fiscal year to a subrecipient shall follow the requirements set forth in Circular A–128, paragraph 9.

(6) *Relation to other audit requirements.* (i) Audits made in accordance with Circular A–128 and this subpart shall be in lieu of any audit required under individual USDA Federal assistance programs. This paragraph applies to State, local, or Indian Tribal governments that made audits in accordance with Circular A–128 and this subpart, even though not required to do so.

(ii) USDA or its designees shall arrange for or make any additional audits that are necessary to carry out its responsibilities under Federal law or regulation. The provisions of Circular A–128 and this subpart do not authorize any State, local, or Indian Tribal government (or subrecipient thereof) to constrain, in any manner, USDA or its designee from carrying out such additional audits.

(iii) When the Office of Inspector General or USDA agencies make or contract for audits or evaluations in addition to the audits made by recipients pursuant to OMB Circular A–128 and this subpart, consistent with other applicable laws and regulations, the cost of such additional reviews shall be paid by USDA unless applicable laws and regulations provide for payment by the recipient. Such additional reviews include economy and efficiency audits, program results audits, and program evaluations.

### § 3015.74 Cognizant agencies.

(a) *Cognizant agency assignments.* In accordance with Circular A–128, OMB assigns cognizant agencies for State and larger local governments. In order to fulfill the cognizant responsibilities, other Federal agencies may participate with an assigned cognizant agency. Smaller governments not assigned a cognizant agency should contact the Federal agency that provides them the most funds.

(b) *OIG responsibilities.* When USDA is assigned as the cognizant agency, the OIG shall have the following responsibilities:

(1) Work with USDA awarding agencies to ensure that audits are made in a timely manner and in accordance with the requirements of Circular A–128 and this subpart;

(2) Provide the liaison between the Federal audit organizations, USDA

awarding agencies, and the recipient entities and independent auditors;

(3) Provide technical advice to State, local, and Indian Tribal governments, USDA awarding agencies, and independent auditors;

(4) Obtain or make quality control reviews of individual audits made by non-Federal audit organizations, and provide the results to other interested organizations, when appropriate;

(5) Inform other affected Federal organizations of any reported illegal acts or irregularities. The Federal organizations, in turn, shall inform appropriate Federal law enforcement officials. State or local government law enforcement and prosecuting authorities, if not advised by the recipient, may also be informed of any violation of law within their jurisdiction by the OIG;

(6) Advise the USDA awarding agency and the recipient of any audit reports that do not meet the audit standards and requirements set forth in Circular A–128 and this subpart. In such instances, the recipient shall work with the auditors to take corrective action. If corrective action is not taken, OIG shall notify the Federal awarding agencies and the recipient of the facts and make recommendations, if appropriate. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action;

(7) Coordinate, to the extent practicable, audits made by or for USDA awarding agencies that are in addition to the audits made pursuant to Circular A–128 and this subpart, and ensure that any additional audits build upon such audits;

(8) Assure that all recipient audit reports affecting Federal assistance programs are received, reviewed, and distributed to the proper Federal cognizant agencies. These agencies (including USDA OIG) are responsible for distributing audit reports to their respective program officials; and

(9) Assure that necessary audits are performed of indirect cost proposals submitted by governmental units for which USDA is cognizant under the provisions of OMB Circular A–87.

(c) *Audit resolution.* OIG shall be responsible for overseeing and assigning responsibility to the appropriate USDA awarding agency for the resolution of crosscutting audit findings that affect the programs of more than one USDA or non-USDA awarding agency. Resolution of findings that relate solely to the programs of a single Federal agency shall be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement between the agencies concerned. Resolution shall be made within six months after issuance of the report by the departments and agencies that provide Federal assistance funds to State and local governments. Corrective action should proceed as rapidly as possible.

### § 3015.75 Reporting requirements.

(a) *Audit reports.* Audit reports must be prepared at the completion of the audit and shall be in accordance with the provisions of Circular A–128, paragraph 13.

(b) *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by OIG to extend the retention period. Audit workpapers shall be made available upon request to OIG, its designee, or the General Accounting Office.

(c) *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, *prompt* notice shall be given to recipient management officials above the level of involvement. The recipient, in turn, shall promptly notify OIG of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriation of funds or other assets.

### § 3015.76 Audit costs.

(a) The costs of audits made in accordance with the provisions of Circular A–128, paragraph 16, are allowable charges to USDA Federal assistance programs.

(b) If the recipients or subrecipients fail to arrange for the required audits set forth in OMB Circular A–128, or fail to assure that an acceptable audit is performed, the USDA awarding agency

may arrange for the performance of the required audits. If USDA arranges for the required audits because of these circumstances, the recipients and/or subrecipients shall reimburse USDA for the cost of these single audits.

### § 3015.77 [Reserved]

APPENDIX A TO SUBPART I—[RESERVED]

## Subpart J—Financial Reporting Requirements

### § 3015.80 Scope and applicability.

(a) This subpart prescribes requirements and forms for recipients to report financial information to USDA and to request grant payments when a letter of credit is not used.

(b) This subpart need not be applied by recipients in dealing with their subrecipients. Recipients are encouraged not to impose on subrecipients more burdensome requirements than USDA imposes on them.

### § 3015.81 General.

(a) Except as provided in paragraphs (d) and (e) of this section, recipients shall use only the forms specified in §§ 3015.82 through 3015.85, and such other forms as may be authorized by OMB for:

(1) Submitting grant financial reports to awarding agencies, or

(2) Requesting grant payments when letters of credit or automatic prescheduled Treasury check advances are not used.

(b) Recipients shall follow all applicable standard instructions issued by OMB for use in connection with the forms specified in §§ 3015.82 through 3015.85. Awarding agencies may not issue substantive supplementary instructions that are inconsistent with this subpart or impose additional requirements on recipients without the approval of O&F and OMB. However, awarding agencies may shade out or instruct the recipient to disregard any line item that the awarding agency finds unnecessary for its decision-making purposes.

(c) Recipients shall not be required to submit more than one original and two copies of the forms required under this subpart.

(d) Awarding agencies may provide computer outputs to recipients to expedite or contribute to the accuracy of reporting. Awarding agencies may accept the required information from recipients in machine readable form or computer printouts instead of prescribed formats.

(e) When an awarding agency determines that a recipient's accounting system does not meet the standards for financial management systems contained in Subpart H of this part, it may require more frequent financial reports or more detail (or both) upon written notice to the recipient (without regard to § 3015.4) until such time as the standards are met.

(f) Awarding agencies may waive any report required by this subpart, if not needed.

(g) Awarding agencies may extend the due date for any financial report upon receiving a justified request from the recipient. The recipient should not wait until the due date if an extension is to be requested, but should submit the request as soon as the need becomes known. Failure by a recipient to submit a report by its due date may result in severe enforcement actions by USDA. These may include withholding of further grant payments, suspension or termination of the grant, etc. Therefore recipients are urged to submit reports on time.

### § 3015.82 Financial status report.

(a) *Form.* Recipients shall use Standard Form 269, Financial Status Report, to report the status of funds for all nonconstruction projects or programs.

(b) *Accounting basis.* Unless specified in the provisions of the grant or subgrant each recipient shall report program outlays and program income on the same accounting basis, i.e., cash or accrual, which it uses in its accounting system.

(c) *Frequency.* The awarding agency may prescribe the frequency of the report for each project or program. However, the report shall not be required more frequently than quarterly except as provided in §§ 3015.4, 3015.81(e), or by statute. If the awarding agency does not specify the frequency of the report, it shall be submitted annually. Upon expiration or termination of the grant

or cooperative agreement, if a period of time remains not covered by a periodic report (i.e., a quarterly, semi-annual or annual report), a final report shall be required.

(d) *Due date.* When reports are required on a quarterly or semiannual basis, they shall be due 30 days after the reporting period. When required on an annual basis, they shall be due 90 days after the end of the grant or agreement period. In addition, final reports as defined in § 3015.82(c) shall be due 90 days after the expiration or termination of grant or agreement support, except in those instances where an extension has been granted.

(e) *Final reports.* (1) Final reports (i.e., the last report submitted) must not show any unpaid obligations.

(2) If the recipient will still have unpaid obligations when the final report is due, the recipient shall submit a provisional final report (showing the unpaid obligations) by the due date, and a true final report when all obligations have been paid. When submitting a provisional final report, the recipient shall tell the awarding agency when it expects to submit a true final report.

(3) As provided in § 3015.81(f), awarding agencies may waive provisional final reports.

### § 3015.83 Federal cash transactions report.

(a) *Form.* (1) For grants or cooperative agreements paid by letters of credit (or Treasury check advances) through any USDA payment office, the recipient shall submit to USDA a Standard Form 272, Federal Cash Transactions Report, and, when necessary, its continuation sheet, SF–272a. Recipients under the Regional Disbursing Office (RDO) system shall not be required to submit a SF–272. For these recipients, awarding agencies shall use information contained in the Request for Payment to monitor recipient cash balances and to get disbursement information.

(2) The SF–272 will be used by USDA to monitor cash advanced to recipients and to obtain disbursement or outlay information from recipients for each grant or cooperative agreement. The format of the report may be adapted, as appropriate, when reporting is to be accomplished with the assistance of automatic data processing equipment, provided that the identical information is submitted.

(b) *Forecasts of Federal cash requirements.* Awarding agencies may require that forecasts of Federal cash requirements be provided in the ''Remarks'' section of the report.

(c) *Cash in hands of subrecipients or contractors.* When considered necessary and feasible by the responsible USDA awarding agency, recipients may be required to:

(1) Show in the ''Remarks'' section of the report the amount of cash advances exceeding three days needs in the hands of their subrecipients or contractors, and

(2) Provide short narrative explanations or actions taken by the recipient to reduce such excess balances.

(d) *Frequency and due date.* Recipients shall submit the report no later than 15 working days following the end of each quarter. However, the USDA payment office may require recipients receiving advances of one million dollars or more per year to submit a report within 15 working days following the end of each month. Awarding agencies may waive the requirement for submission of the SF–272 when monthly advances do not exceed $10,000 per recipient, provided that such advances are monitored through other forms contained in this subpart, or if, in the awarding agency's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances.

### § 3015.84 Request for advance or reimbursement.

(a) *Advance payments.* Recipients of nonconstruction grants or cooperative agreements shall request Treasury check advance payments on Standard Form 270, Request for Advance or Reimbursement. This form is not used for letter of credit drawdowns or predetermined automatic advance payments.

(b) *Reimbursements.* Recipients of nonconstruction grants or cooperative agreements shall request reimbursement on Standard Form 270, Request for Advance or Reimbursement (for reimbursement request under construction grants or cooperative agreements, see § 3015.85).

(c) The frequency for submitting payment requests on SF–270 is treated in § 3015.104.

### § 3015.85 Outlay report and request for reimbursement for construction programs.

(a) *Construction grants paid by reimbursement method.* (1) Requests for reimbursement under construction grants shall be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Awarding agencies may, however, prescribe the Request for Advance or Reimbursement form specified in § 3015.84 instead of this form.

(2) The frequency for submitting reimbursement requests is treated in § 3015.104.

(b) *Construction grants paid by letter of credit or Treasury check advance.* (1) When a construction grant or a cooperative agreement is paid by letter of credit or Treasury check advances, the recipient shall report its outlays to the awarding agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The awarding agency will provide any necessary special instructions. However, frequency and due date shall be governed by § 3015.82 (c) and (d).

(2) When a construction grant or cooperative agreement is paid by Treasury check advances based on periodic requests from the recipient, the advances shall be requested on the form specified in § 3015.84.

(3) The awarding agency may substitute the Financial Status Report specified in § 3015.82 for the Outlay Report and Request for Reimbursement.

(c) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 3015.82(b).

## Subpart K—Monitoring and Reporting Program Performance

### § 3015.90 Scope.

This subpart establishes procedures for monitoring and reporting program performance of recipients. These procedures place responsibility on recipients to manage the day-to-day operations of their grant and subgrant supported activities.

### § 3015.91 Monitoring by recipients.

Recipients shall monitor the performance of grant and subgrant-supported activities to assure that performance goals are being achieved. Recipient monitoring shall cover each program, function, or activity.

### § 3015.92 Performance reports.

(a) *Nonconstruction.* The awarding agency shall, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the recipient to submit a performance report only upon expiration or termination of grant support. Unless waived by the awarding agency this report will be due on the same date as the final Financial Status Report (as provided in § 3015.82 (d) and (e)).

(1) Recipients shall submit annual peformance reports unless the awarding agency requires quarterly or semi-annual reports or unless covered under paragraph (a) of this section. Annual reports shall be due 90 days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report shall be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a recipient, the awarding agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the awarding agency.

(2) Performance reports shall contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the goals established for the period. Where the output of the project can be readily expressed in numbers, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established goals were not met.

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

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

(4) Recipients shall adhere to the standards in paragraph (a) of this section in prescribing performance reporting requirements for subrecipients.

(b) *Construction.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by awarding agencies to monitor progress under construction grants and subgrants. The awarding agency shall require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

### § 3015.93 Significant developments.

Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the recipient shall inform the awarding agency as soon as the following types of conditions become known:

(a) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure shall include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(b) Favorable developments which enable meeting time schedules and goals sooner or at less cost than anticipated or producing more beneficial results than originally planned.

### § 3015.94 Site visits.

The awarding agency shall make site visits as frequently as practicable to:

(a) Review program accomplishments and manage control systems.

(b) Provide such technical assistance as may be required.

### § 3015.95 Waivers, extensions and enforcement actions.

(a) *Reports from recipients.* USDA may waive any performance report required by this subpart if not needed.

(b) *Reports from subrecipients.* The recipient may waive any performance report from a subrecipient when not needed. The recipient may extend the due date for any performance report from a subrecipient if the recipient will still be able to meet its performance reporting obligations to the USDA awarding agency.

## Subpart L—Payment Requirements

### § 3015.100 Scope.

This subpart prescribes the basic standards and methods under which a USDA awarding agency will make grant payments to recipients, and recipients will make subgrant payments to their subrecipients.

### § 3015.101 General.

Methods and procedures for making payments to recipients shall minimize the time elapsing between the transfer of funds and the recipient's disbursements.

### § 3015.102 Payment methods.

(a) *Non-construction.* (1) Letters of credit will be used to pay USDA recipients when all the following conditions exist:

(i) There is or will be a continuing relationship between the recipient and the USDA awarding agency for at least a 12 month period and the total amount of advances to be received within that period from the awarding agency is $120,000 or more per year.

(ii) The recipient has established or demonstrated to the USDA awarding agency the willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds from the Treasury and their disbursement by the recipient.

(iii) The recipient's financial management system meets the standards for fund control and accountability prescribed in Subpart H of this part.

(2) Advances by Treasury check will be used, in accordance with Treasury Circular No. 1075, when the recipient does not meet the requirements in paragraph (a)(1)(i) of this section but does meet the requirements in paragraphs (a)(1) (ii) and (iii) of this section.

(3) Reimbursement by Treasury check shall be the preferred method when the recipient does not meet the requirements specified in either paragraph (a)(1)(ii) or paragraph (a)(1)(iii) of this section. This method may also

be used when USDA financial assistance makes up only a minor portion of the program and where the major portion of the program is accomplished through private financing or Federal loans.

(b) *Construction.* (1) Reimbursement by Treasury check shall be the preferred method when the recipient does not meet the requirements specified in §3015.102(a)(1) (ii) or (iii), and may be used for any USDA construction grant unless USDA has entered into an agreement with the recipient to use a letter of credit for all USDA grants, including construction grants.

(2) When the reimbursement by Treasury check method is not used, §3015.102(a) (1) and (2) shall apply to the construction grants. Implementing procedures under §3015.102(a) (1) and (2) will be the same for construction grants as for nonconstruction grants awarded to the same recipient, insofar as possible.

(3) USDA awarding agencies will not use the percentage-of-completion method to pay its construction grants. The recipient may use that method to pay its construction contractor, but if it does, USDA payments to the recipient will nevertheless be based on the recipient's actual rate of disbursements.

### §3015.103 Withholding payments.

(a) Unless otherwise required by Federal statute, payments for proper charges incurred by recipients will not be withheld at any time during the grant period unless (1) the recipient has failed to comply with the program objectives, grant award conditions, or Federal reporting requirements, or (2) the recipient is indebted to the United States and collection of the indebtedness will not impair accomplishment of the objectives of any grant program sponsored by the United States, or (3) the grant is suspended pursuant to Subpart N of this part.

(b) Payments withheld for failure of a recipient to comply with reporting requirements, but without suspension of the grant, will be released to the recipient upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with Subpart N of this part. When a debt is to be collected, USDA awarding agencies may withhold payments or require appropriate accounting adjustments to recorded cash balances for which the recipient is accountable to the Federal government, in order to liquidate the indebtedness.

### §3015.104 Requesting advances or reimbursements.

(a) *Advances.* If advance payments are by Treasury check and are not prescheduled, the recipient shall submit its payment requests at least monthly. Less frequent requests are not permitted for they result in advances covering excessive periods of time. Recipient requests for advances shall not be made in excess of the Federal share of reasonable estimates of outlays for the month covered. These estimates shall be made on a cash basis, even if the recipient uses an accrual accounting system.

(b) *Reimbursements.* If payments are made through reimbursement or by Treasury check:

(1) Requests for reimbursements may be submitted monthly or more frequently if authorized to do so by the awarding agency. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

(2) The recipient shall not request reimbursement for the Federal share of amounts withheld from contractors to ensure satisfactory completion of work until after it makes those payments.

(c) *Forms.* The forms for requesting advances or reimbursements are identified in Subpart J of this part.

### §3015.105 Payments to subrecipients.

Recipients shall observe the requirements of this subpart in making (or withholding) payments to subrecipients, with the following exceptions:

(a) Advance payment by Treasury check may be used instead of letter of credit;

(b) The forms specified in Subpart J of this part for requesting advances and reimbursements are not required to be used by subrecipients; and

(c) The reimbursement by check method may be used to pay any construction subgrant.

## Subpart M—Programmatic Changes and Budget Revisions

### § 3015.110 Scope and applicability.

(a) *Scope.* This subpart deals with prior approval requirements for post-award programmatic changes and budget revisions by recipients.

(b) *Exemption of mandatory or formula grants.* Sections 3015.113 through 3015.115 do not apply to programmatic changes or budget revisions made by recipients under State plans or other grants which the awarding agency is required by law to award if the applicant meets all applicable requirements for entitlement.

(c) *Exemption of certain subgrants.* Sections 3015.113 through 3015.115 do not apply to subgrants from States to their local governments under a mandatory or formula grant, if the local government is not required to apply for the subgrant on a project basis. Generally, such exempt subgrants will occur under a State plan which provides for local administration of a State-wide program under State supervision.

### § 3015.111 Cost principles.

(a) The cost principles prescribed by subpart T of this part require prior approval of certain types of costs. Except when waived, those prior approval requirements apply to all grants and subgrants, whether or not §§ 3015.113 through 3015.115 apply.

(b) Procedures for prior approvals required by the cost principles are in § 3015.196. Procedures for prior approvals required by this subpart are in § 3015.112.

### § 3015.112 Approval procedures.

(a) *For grants or cooperative agreements.* When requesting a prior approval required by this subpart, recipients shall address their requests to the responsible official of the awarding agency. Approvals shall not be valid unless they are in writing and signed by either the responsible officer, the head of the awarding agency, or the head of the awarding agency's regional office.

(b) *For subgrants.* Recipients shall be responsible for reviewing requests from their subrecipients for the approvals required by this subpart and for giving or denying the approval. A recipient shall not approve any action which is inconsistent with the purpose or terms of the Federal grant or cooperative agreement. If an action by a subrecipient will result in a change in the overall grant project or budget requiring approval from the awarding agency, the recipient shall obtain that approval before giving its approval to the subrecipient. Approvals shall not be valid unless they are in writing and signed by an authorized official of the recipient organization.

(c) *Timing.* Within 30 days from the date of receipt of a request for approval, the approval authority shall review the request and notify the recipient of its decision. If the request for approval is still under consideration at the end of 30 days, the approval authority shall inform the recipient in writing as to when to expect the decision.

### § 3015.113 Programmatic changes.

(a) *Scope.* This section contains requirements for prior approval of departures, other than budget revisions, from approved project plans. In addition to the requirements in this section, awarding agencies may require prior approval for other kinds of programmatic changes to an approved cooperative agreement, grant, or subgrant project.

(b) *Changes to project scope or objectives.* The recipient shall obtain prior approval for any change to the scope or objectives of the approved project. (For construction projects, any material change in approved space utilization or functional layout shall be considered a change in scope).

(c) *Changes in key people.* This section applies to grants, subgrants, and cooperative agreements for research. This section does not apply to other types of grants, subgrants, or cooperative agreements unless other terms of the award make it apply. The recipient shall obtain prior approval:

(1) To continue the project during any continuous period of more than three months without the active direction of an approved project director or principal investigator;

(2) For its selection of a replacement for the project director of principal investigator;

(3) For its selection of a replacement for any other persons named and expressly designated as key project people in the grant, subgrant, or cooperative agreement award document; or

(4) To permit the project director or principal investigator (or anyone covered by paragraph (c)(3) of this section) to devote substantially less effort to the project than was anticipated when the award was made.

(d) *Transferring work and providing financial assistance to others.* Recipients shall obtain prior approval for transferring to another party the actual performance of the substantive programmatic work, and for providing any form of financial assistance to another party.

(e) *Audiovisual activities.* (1) Except to the extent explicitly included in the project plan approved at the time of award, using grant support for any of the following requires prior approval:

(i) Producing an audiovisual.

(ii) Buying ownership of any of the rights in the work embodied in the audiovisual. (This does not apply to merely buying a license in any of the rights. For the remainder of this section, buying ownership of the rights is referred to simply as buying or purchasing an audiovisual).

(iii) Presenting or distributing to the general public an audiovisual that was produced or bought with grant support.

(2) Prior approval is not required for:

(i) Any audiovisual activity under a subgrant.

(ii) Any audiovisual whose direct production or purchase cost to the recipient is $5,000 or less.

(iii) The production or purchase of an audiovisual as a research instrument or for documenting experimentation or findings, if the audiovisual is not intended for presentation or distribution to the general public.

(3) Following are examples of presentation or distribution of an audiovisual to the general public.

(i) Broadcast on commercial, cable, or educational television, or radio.

(ii) Showing in commercial motion picture theaters.

(iii) Showing in public places such as airports, waiting rooms, bus or railroad depots, and vacation resorts.

(iv) Showing to civic associations, schools (except when used as a teaching tool in a classroom setting), clubs, fraternal organizations, or similar lay groups.

### §3015.114 Budgets—general.

(a) *Research and non-research project budgets.* For research and non-research projects which involve cost-sharing or matching, approved budgets shall ordinarily consist of a single set of figures covering total project cost (the sum of the awarding agency's share and the recipient's share). However, the awarding agency may specify that the recipient's share not be included in the approved budget. In no case, however, shall the approved budget be in the form of a separate set of figures for each share.

(b) *Subdivision by programmatic segments.* Some grants, subgrants, and cooperative agreements contain two or more programmatic segments (such as discrete programs, projects, functions, or types of activities). In these cases, the awarding agency may require that the approved budget be subdivided to show the anticipated cost of each programmatic segment.

### §3015.115 Budget revisions.

(a) *Nonconstruction projects.* (1) Except as provided in paragraph (a)(2) of this section, the recipient of a grant, subgrant, or cooperative agreement having an approved budget shall obtain prior approval for any budget revision which will:

(i) Involve transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or

(ii) Involve transfer of amounts previously budgeted for training allowances (direct payments to trainees), or

(iii) Result in a need for the award of additional funds, e.g., an increase in the base upon which indirect costs are calculated which will increase allocable indirect costs and result in a claim for a supplementary award.

(2) Any or all of the prior approval requirements in paragraph (a) of this section may be waived by the awarding agency.

(3) Except as provided in § 3015.116 other budget changes under nonconstruction grants do not require approval.

(b) *Construction projects.* Unless provided otherwise by the terms of the grant, subgrant, or cooperative agreement, revisions to construction project budgets do not require approval.

### § 3015.116 Construction and nonconstruction work under the same grant, subgrant, or cooperative agreement.

When a grant, subgrant, or cooperative agreement provides support for both construction and nonconstruction work, the awarding agency may require prior approval for any fund or budget transfers between the two types of work.

## Subpart N—Grant and Subgrant Closeout, Suspension and Termination

### § 3015.120 Closeout.

(a) Each grant or subgrant shall be closed out as soon as possible after expiration or notice of termination.

(b) The following shall apply when closing out USDA grants:

(1) Upon request from the recipient, any allowable reimbursable cost not covered by previous payments shall be promptly paid by USDA.

(2) Any unobligated balance of cash advanced to the recipient shall be immediately refunded to the awarding agency or managed in accordance with USDA instructions.

(3) Within a maximum period of 90 days following the date of expiration or termination of a grant, all financial performance and related reports required by the terms of the agreement shall be submitted to the awarding agency by the recipient. USDA reserves the option of extending the due date for any report and may waive any report that it considers to be unnecessary.

(4) The provisions formally expressed and agreed to within the grant arrangement shall dictate the settlement of any upward or downward adjustments of the Federal share of costs.

(c) (1) A grant closeout shall not affect the retention period for, or Federal rights of access to, grant records. (See Subpart D of this part).

(2) The closeout of a grant does not affect the recipient's responsibilities regarding property under Subpart R of this part or with respect to any program income the recipient is still accountable for under Subpart F of this part.

(3) Final audits (See Attachment L, Circular A–102 and Attachment K of Circular A–110) are not a required part of the grant or subgrant closeout procedures. Normally, a final audit should not be needed unless there are problems with a grant or subgrant that require audit attention. If a USDA agency considers a final audit to be necessary, it shall contact the OIG Region within which the recipient or subrecipient is located and inform OIG of the situation. OIG shall be responsible for assuring that necessary final audits are performed and for any necessary coodination with other Federal cognizant audit agencies, recipients or State and local auditors. Audits performed in accordance with Subpart I may serve as final audits providing such audits meet the needs of the requesting agency.

(4) If a grant is closed out without audit, the awarding agency reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

### § 3015.121 Amounts payable to the Federal government.

The following outstanding sums for each grant shall be considered as a debt or debts owed by the recipient to the Federal government. They shall, if not paid upon demand, be subject to recovery by the awarding agency from the recipient or its successor or assignees by set off or other action provided by law:

(a) Any grant funds paid to the recipient by the Federal government which exceed the amount the recipient is finally determined to be entitled to under the provisions of the grant award;

(b) Any interest or other investment income earned on advances of grant

funds which is due the Federal government;

(c) Any royalties or other special classes of program income which, under the provisions of the grant award, are required to be returned to the Federal government;

(d) Any amount the Federal government is entitled to under Subpart R of this part; and

(e) Under the provisions of the grant award, any other amounts finally determined to be due to the Federal government.

**§3015.122 Violation of terms.**

(a) Whenever it is determined that the recipient has materially failed to comply with the provisons of the grant award, the awarding agency may suspend or terminate, in accordance with §§3015.123 and 3015.124, any grant in whole, or in part, at any time before the date of completion, or take such other remedies as may be legally available and appropriate.

(b) A grant may be suspended or terminated in the current period for failure to submit a report still due from a prior period. This action is applicable when a project or program is supported over two or more funding periods.

**§3015.123 Suspension.**

(a) When a recipient has materially failed to comply with the provisions prescribed in the grant agreement, the awarding agency may, after reasonable notice to the recipient, suspend the grant in whole or in part. A suspension notice shall be issued by the awarding agency stating the reasons for the suspension, any corrective action required of the recipient, and the effective date. Suspension may go into effect immediately if the awarding agency deems it necessary to protect its interest and if a delayed effective date would be unreasonable considering the awarding agency's responsibilities to protect the Federal government's interest. Suspension shall remain in effect until the recipient has taken corrective action satisfactory to the awarding agency, or given evidence that such corrective action will be taken, or until the awarding agency terminates the grant.

(b) Unless specifically authorized by the awarding agency in the notice of suspension or subsequently expressed in an amendment to it, new obligations incurred by the recipient during the suspension period shall not be allowed. Necessary and otherwise allowable costs which the recipient could not reasonably avoid during the suspension period will be allowed, if they result from obligations properly incurred by the recipient before the effective date of the suspension and not in anticipation of suspension or termination. If the awarding agency approves, third party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost-sharing or matching requirements.

(c) During the suspension period, appropriate adjustments to payments under the suspended grant will be made by not giving credit to the recipient for disbursements made in payment of unauthorized obligations incurred during the suspension period or by withholding subsequent payments.

**§3015.124 Termination.**

(a) *Termination for cause.* The awarding agency may terminate any grant or other agreement in whole, or in part, at any time before the date of expiration, whenever it is determined that the recipient has materially failed to comply with the conditions of the agreement. The awarding agency shall promptly notify the recipient in writing of the determination and reasons for the termination, together with the effective date.

(b) *Termination by mutual agreement.* Except as provided in paragraph (a) of this section, grants may be terminated in whole, or in part, only as follows:

(1) When the awarding agency and recipient agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(2) By written notification by the recipient to the awarding agency setting forth the reasons for termination, the effective date, and in the case of partial termination, the portion to be terminated. In the case of a partial termination, if the awarding agency decides that the remaining portion of the grant will not accomplish the purposes for which the grant was made, the awarding agency may terminate the award in

its entirety under either paragraph (a) or paragraph (b)(1) of this section.

(c) *Termination settlements.* Upon termination of a grant, the recipient shall not incur any new obligations for the terminated portion of the agreement after the effective date, and shall cancel as many outstanding obligations as possible. The awarding agency, however, shall allow full credit to the recipient for the Federal share of the non-cancellable obligations properly incurred by the recipient prior to termination.

### § 3015.125 Applicability to subgrants.

Recipient subgrants shall be subjected to the same standards regarding closeout, suspension, and termination of subgrants as prescribed in this subpart for awarding agencies.

## Subparts O–P [Reserved]

## Subpart Q—Application for Federal Assistance

### § 3015.150 Scope and applicability.

(a) This subpart prescribes forms and instructions to be used by governmental organizations (except hospitals, non-profit organizations, and institutions of higher education operated by a government) in applying to USDA for discretionary grants. This subpart is not applicable, however, to mandatory or formula grants or programs which do not require applicants to apply to USDA for funds on a project basis.

(b) This subpart permits awarding agencies to prescribe the form of applications by nongovernmental organizations (including hospitals, non-profit organizations and institutions of higher education operated by a government), but prescribes the use of a standard facesheet for certain of these applications.

(c) This subpart applies only to applications for grants or cooperative agreements and is not required to be applied by recipients in dealing with applicants for subgrants. However, recipients are encouraged not to adopt more detailed or burdensome application requirements for subgrants.

(d) This subpart also prescribes standards for competition to be used by USDA agencies in awarding discretionary cooperative agreements and grants. (This subpart is not applicable to cooperative agreements awarded pursuant to the provisions of sections 1472(b) and 1473C of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended.)

[46 FR 55639, Nov. 10, 1981, as amended at 51 FR 17172, May 9, 1986]

### § 3015.151 Authorized forms.

(a) Sections 3015.152 through 3015.156 specify the forms that governmental organizations shall use to apply to USDA for a discretionary grant.

(b) Governments need not submit more than the original and two copies of application forms. When less will suffice, the awarding agency shall notify potential applicants.

(c) When a government agency amends a previously submitted application or applies for additional funding (such as a continuation or supplemental award) only the facesheet and any other affected pages are required to be submitted. Previously submitted pages whose information is still current may be resubmitted, but are not required to be resubmitted.

### § 3015.152 Preapplication for Federal assistance.

(a) When a government submits a preapplication, it shall use the Preapplication for Federal Assistance form prescribed by Circular A–102. The purposes of these preapplications shall be to:

(1) Establish communication between the potential applicant and the awarding agency;

(2) Determine the potential applicant's eligibility;

(3) Identify projects which have little or no chance for Federal funding before applicants incur significant costs for preparing an application.

(b) Preapplication is always required if the potential applicant is a government and the proposed project (1) is for construction, land acquisition, or land development, and (2) would require more than $100,000 of Federal funding. If these conditions are not present, potential applicants need not submit preapplications unless required to do so

by the awarding agency. Any government may submit a preapplication even when not required.

### §3015.153 Notice of preapplication review action.

Awarding agencies shall inform governmental applicants of the results of their review of preapplications by using the Notice of Preapplication Review Action form prescribed by Circular A–102. If the review cannot be completed within 45 days, the awarding agency shall inform the applicant, in writing, when it will complete the review.

### §3015.154 Application for Federal assistance (nonconstruction programs).

Governments shall use the Application for Federal Assistance (Nonconstruction Programs) form prescribed by OMB Circular A–102 in applying for discretionary grants unless a form specified in §3015.155 or §3015.156 is to be used.

### §3015.155 Application for Federal assistance (construction programs).

Governments shall use the Application for Federal Assistance (for Construction Programs) form prescribed by Circular A–102 in applying for any grant whose purpose is solely or primarily construction, land acquisition, or land development.

### §3015.156 Application for Federal assistance (short form).

Governments shall use the Application for Federal Assistance (Short Form) form prescribed by Circular A–102 in applying for any single-purpose, one-time grant of less than $10,000 not requiring Circular A–95 clearinghouse review, an environmental impact statement, or the relocation of persons, businesses, or farms. Awarding agencies may, at their discretion, authorize or require this form for applications for larger amounts.

### §3015.157 Authorized form for nongovernmental organizations.

Nongovernmental organizations shall use application forms prescribed by the awarding agency. The facesheet of these applications shall be Standard Form 424.

### §3015.158 Competition in the awarding of discretionary grants and cooperative agreements.

(a) *Standards for competition.* Except as provided in paragraph (d) of this section, awarding agencies shall enter into discretionary grants and cooperative agreements only after competition. An awarding agency's competitive award process shall adhere to the following standards:

(1) Potential applicants must be invited to submit proposals through publications such as the FEDERAL REGISTER, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means of solicitation. In so doing, awarding agencies should consider the broadest dissemination of project solicitations in order to reach the highest number of potential applicants.

(2) Proposals are to be evaluated objectively by independent reviewers in accordance with written criteria set forth by the awarding agency. Reviewers should make written comments, as appropriate, on each application. Independent reviewers may be from the private sector, another agency, or within the awarding agency, as long as they do not include anyone who has approval authority for the applications being reviewed or anyone who might appear to have a conflict of interest in the role of reviewer of applications. A conflict of interest might arise when the reviewer or the reviewer's immediate family members have been associated with the applicant or applicant organization within the past two years as an owner, partner, officer, director, employee, or consultant; has any financial interest in the applicant or applicant organization; or is negotiating for, or has any arrangement, concerning prospective employment.

(3) An unsolicited application, which is not unique and innovative, shall be competed under the project solicitation it comes closest to fitting. Awarding agency officials will determine the solicitation under which the application is to be evaluated. When the awarding agency official decides that

the unsolicited application does not fall under a recent, current, or planned solicitation, a noncompetitive award may be made, if appropriate to do so under the criteria of this section. Otherwise, the application should be returned to the applicant.

(b) *Project solicitations.* A project solicitation by the awarding agency shall include or reference the following, as appropriate:

(1) A description of the eligible activities which the awarding agency proposes to support and the program priorities;

(2) Eligible applicants;

(3) The dates and amounts of funds expected to be available for awards;

(4) Evaluation criteria and weights, if appropriate, assigned to each;

(5) Methods for evaluating and ranking applications;

(6) Name and address where proposals should be mailed and submission deadline(s);

(7) Any required forms and how to obtain them;

(8) Applicable cost principles and administrative requirements;

(9) Type of funding instrument intended to be used (grant or cooperative agreement); and

(10) The *Catalog of Federal Domestic Assistance* number and title.

(c) *Approval of applications.* The final decision to award is at the discretion of the awarding/approving official in each agency. The awarding/approving official shall consider the ranking, comments, and recommendations from the independent review group, and any other pertinent information before deciding which applications to approve and their order of approval. Any appeals by applicants regarding the award decision shall be handled by the awarding agency using existing agency appeal procedures or good administrative practice and sound business judgment.

(d) *Exceptions.* The awarding/approving official may make a determination in writing that competition is not deemed appropriate for a particular transaction. Such determination shall be limited to transactions where it can be adequately justified that a noncompetitive award is in the best interest of the Government and necessary to the accomplishment of the goals of the program. Reasons for considering noncompetitive awards may include, but are not necessarily limited to, the following:

(1) Nonmonetary awards of property or services;

(2) Awards of less than $75,000;

(3) Awards to fund continuing work already started under a previous award;

(4) Awards which cannot be delayed due to an emergency or a substantial danger to health or safety;

(5) Awards when it is impracticable to secure competition; or

(6) Awards to fund unique and innovative unsolicited applications.

[51 FR 17172, May 9, 1986]

## Subpart R—Property

### § 3015.160 Scope and applicability.

(a) Except as explained in paragraphs (c), (d), and (e) of this section, this subpart applies to real property, equipment (including ADP) and supplies whose acquisition is supported by a grant.

(b) Also contained in this subpart are standards covering inventions, patents, and copyrights arising out of activities supported by a grant.

(c) This subpart does not apply to:

(1) Property for which only depreciation or use allowances are charged;

(2) Property donated entirely as a third party in-kind contribution; or

(3) Equipment or supplies acquired primarily for sale or rental, rather than for use.

(d) This subpart applies to equipment or supplies acquired by a contractor under a grant or subgrant only if, by terms of the contract, title vests in the recipient or subrecipient.

(e) For research grants that are subject to an institutional cost-sharing agreement, real property, equipment, and supplies shall be subject to this subpart only if at least some part of the acquisition cost is supported as a direct cost by Federal grant funds.

### § 3015.161 Additional requirements.

Provided they observe the requirements of this subpart, recipients may follow their own property management

policies and procedures. Unless specifically required by Federal statutes or Executive Orders, awarding agencies may not impose on recipients property requirements (including property reporting requirements) not authorized by this subpart.

**§3015.162 Title to real property, equipment and supplies.**

Subject to the obligations and conditions specified in this subpart, title to real property, equipment, and supplies acquired under a grant or subgrant shall vest, upon acquisition, in the recipient or subrecipient, respectively. In certain cases, money due the Federal government upon disposition of real property may be authorized to be used for allowable costs rather than paid to USDA. (See §3015.173.)

**§3015.163 Real property.**

Except as stated otherwise by Federal statutes, real property applicable to this subpart shall be subject to the following requirements, in addition to any other requirements imposed by the provisions of the grant award:

(a) *Use.* The property shall be used for the originally authorized purpose as long as needed for that purpose. When no longer so needed, the awarding agency may approve the use of the property for other purposes. These uses shall be limited to:

(1) Projects or programs supported by other Federal grants or assistance agreements.

(2) Activities not supported by other Federal grants or assistance agreements but having purposes consistent with those of the legislation under which the original grant was made.

(b) *Transfer of title.* In accordance with paragraph (a) of this section, approval may be requested from the awarding agency to transfer title to an eligible third party for continued use for authorized purposes. If approval is permissible under Federal statutes, and is given, the terms of the transfer shall provide that the transferee shall assume all the rights and obligations of the transferor set forth in this subpart or in other terms of the grant or subgrant.

(c) *Disposition.* When the real property is no longer to be used as provided in paragraphs (a) and (b) of this section, the disposition instructions of the awarding agency shall be followed. Those instructions will provide for one of the following alternatives:

(1) The property shall be sold and the Federal government shall have a right to an amount computed by multiplying the Federal share of the property times the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). Proper sales procedures shall be followed which provide for competition to the extent practicable and result in the highest possible return.

(2) The recipient shall have the option either of selling the property in accordance with paragraph (c)(1) of this section or of retaining title. If title is retained, the Federal government shall have a right to an amount computed by multiplying the market value of the property by the Federal share of the property.

(3) The recipient shall transfer the title to either the Federal government or an eligible non-Federal party named by the awarding agency. The recipient shall be entitled to be paid an amount computed by multiplying the market value of the property by the non-Federal share of the property. In cases where the property belonged to a subrecipient, see §3015.172 for the subrecipient's share.

**§3015.164 Statutory exemptions for equipment and supplies.**

(a) In certain circumstances some Federal statutes permit title to equipment or supplies acquired with grant funds to vest in the recipient without further obligation to the Federal government or on such terms and conditions set forth in the grant award, as deemed appropriate. The Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224, is an example of such a statute. It provides this authority for equipment and supplies purchased with the funds of grants (and Federal contracts and cooperative agreements) for the conduct of basic or applied scientific research at non-profit institutions of higher education or at non-profit organizations whose primary purpose is the conduct of scientific research.

(b) If equipment is subject to a statute of the kind described in paragraph (a) of this section, it shall be exempt from the requirements in the remaining sections of this subpart. However, when an equipment item has a unit acquisition cost of $1,000 or more, it shall be subject to § 3015.165 concerning rights to require transfer, and, while subject to such a right, to the rules on replacement in § 3015.167.

(c) If supplies are subject to a statute of the kind described in paragraph (a) of this section, they shall be exempt from all provisions of the remainder of this subpart which would otherwise apply.

### § 3015.165 Rights to require transfer of equipment.

(a) *USDA right.* The awarding agency shall have the right to require the transfer of equipment (including title) for items of equipment having a unit cost of $1,000 or more to the Federal government or to an eligible non-Federal party named by the awarding agency. Normally, USDA agencies will only exercise this right if the project or program for which the equipment was acquired is transferred from one recipient to another. The following conditions shall govern this right:

(1) The property shall be appropriately identified in the grant award.

(2) In order for the awarding agency to exercise the right, disposition instructions must be issued no later than 120 days after the end of USDA grant support for the project or program for which the equipment was acquired. Furthermore:

(i) If the equipment is eligible for the exemptions in § 3015.164 and ceases to be needed for the project or program for which it was acquired while the project or program is still being performed by the recipient, the disposition instructions must have been received by the recipient while the equipment was still needed for that project or program.

(ii) If the equipment is not eligible for those exemptions, disposition instructions must have been received by the recipient before other permissible disposition of the equipment took place in accordance with § 3015.168.

(3) If the right is exercised, the recipient shall be entitled to be paid any reasonable, resulting shipping or storage costs incurred, plus an amount computed by multiplying the market value of the equipment by the non-Federal share of the equipment.

(b) *Right of parties awarding subgrants.* A recipient may reserve for itself, when awarding a subgrant, rights similar to those found in paragraph (a) of this section which covers items of equipment having a unit acquisition cost of $1,000 or more which are acquired under that subgrant. Without the approval of the awarding agency, the right may be exercised only if the project or program for which the equipment was acquired is transferred to another subrecipient and only for the purpose of transferring the equipment to the new subrecipient for continued use in the project or program.

(c) *Equipment lists.* If at any time an awarding agency is considering exercising its right to require transfer of equipment, it may require the recipient to furnish it with a list of all items of equipment that are subject to the right. As such, the awarding agency will decide which items, if any, should be transferred.

### § 3015.166 Use of equipment.

(a) *Basic rule.* Whenever the equipment is not transferred under the provisions set forth in § 3015.165, it shall be used by the recipient 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. When the equipment is no longer needed for the original project or program the recipient shall use the equipment, if needed, in other projects or programs currently or previously funded by the Federal government, in the following order of priority:

(1) Projects or programs currently or previously funded by the same USDA awarding agency.

(2) Projects or programs currently or previously funded by any USDA awarding agency.

(3) Projects or programs currently or previously funded by other Federal agencies.

(b) *Shared use.* When equipment is used less than full time in the original project or program, the recipient shall make it available for use in other projects or programs currently or previously funded by the Federal government. Provided, such other use will not interfere with the work on the original project or program. First preference for such use, however, shall be given to other projects or programs funded by the same USDA awarding agency.

(c) *Use by other recipients.* When the recipient can no longer use the equipment as required by paragraph (a) of this section, it may voluntarily make the equipment available for use on projects or programs currently or previously funded by the Federal government which the recipient is supporting through subgrants or through non-Federal grants. A subrecipient may also voluntarily make the equipment available for use in projects or programs currently or previously funded by the Federal government which are being conducted or supported by the recipient.

(d) *Other uses.* Unless the awarding agency provides otherwise, while equipment is being used as described in the preceding paragraphs of this section, it may also be used part-time for other purposes. The use as described in the previous paragraphs, however, shall be given priority over other uses.

**§3015.167 Replacement of equipment.**

(a) If needed, equipment may be exchanged for replacement equipment. Replacement of equipment may be done either through trade-in or through sale and application of the proceeds to the acquisition cost of replacement equipment. In either case, the transaction must be one which a prudent person would make in like circumstances.

(b) If an additional outlay to acquire the replacement equipment is charged as a direct cost to either Federal funds or required cost-sharing or matching under a Federal award, the replacement equipment shall be subject to whatever property requirements or exemptions are applicable to that award. If the award is a grant from USDA, the full acquisition cost of the replacement equipment shall determine which provisions of this subpart apply.

(c) For any replacement not covered by paragraph (b) of this section, the provisions of this subpart applicable to the equipment replaced shall carry over to the replacement equipment. None of the provisions of this subpart shall carry over if (1) the Federal share of the equipment replaced was 10 percent or less or (2) the product of that share times the amount received for trade-in or sale is $100 or less.

**§3015.168 Disposal of equipment.**

When original or replacement equipment is no longer to be used in projects or programs currently or previously sponsored by the Federal government, disposal of the equipment shall be made as follows:

(a) Equipment with a unit acquisition cost of less than $1,000 may be sold, retained or otherwise disposed of with no further obligation to the Federal government.

(b) All other equipment may be retained or sold. The Federal government shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the Federal share of the equipment (see §3015.172). If part of the Federal share of the equipment came from an award under which the exemptions in §3015.164 were applicable, the amount due shall be reduced pro rata. In any case, if the equipment is sold, $100 or 10 percent of the total sales proceeds, whichever is greater, may be deducted and retained from the amount otherwise due for selling and handling expenses. If the recipient's project or program for which or under which the equipment was acquired is still receiving grant support from the same Federal program and if the awarding agency approves, the net amount due may be used for allowable costs of that project or program. Otherwise, the net amount must be returned to the awarding agency by check or money order.

**§3015.169 Equipment management requirements.**

Recipient procedures for managing equipment shall, as a minimum, meet the following requirements (including

replacement equipment) until such actions as transfer, replacement or disposal takes place:

(a) Property records shall be maintained accurately. (Subpart D of this part contains retention and access requirements for these records.) The records shall include for each item of equipment the following:

(1) A description of the equipment including manufacturer's serial numbers.

(2) An identification number, such as the manufacturer's serial number.

(3) Identification of the grant under which the recipient acquired the equipment.

(4) The information needed to calculate the Federal share of the equipment (see § 3015.172).

(5) Acquisition date and unit acquisition cost.

(6) Location, use and condition of the equipment and the date the information was reported.

(7) All pertinent information on the ultimate transfer, replacement, or disposal of the equipment.

(b) Every two years, at a minimum, a physical inventory shall be conducted and the results reconciled with the property records to verify the existence, current utilization, and continued need for the equipment. Any discrepancies between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the differences.

(c) In order to insure adequate safeguards to prevent loss, damage or theft of equipment, a control system shall be used. Any loss, damage or theft of equipment shall be investigated and fully documented. The awarding agency may require a report of the circumstances involving the loss, damage, or theft of equipment.

(d) In order to keep the equipment in good condition, adequate maintenance procedures shall be implemented.

(e) Where equipment is to be sold and the Federal government is to have a right to part or all of the proceeds, selling procedures shall be established which will provide for competition to the extent practicable and result in the highest possible return.

**§ 3015.170 Damage, loss, or theft of equipment.**

(a) *Applicability*. This section applies to equipment with a unit acquisition cost of $1,000 or more that, before disposal (see § 3015.168), is damaged beyond repair, lost, or stolen.

(b) *Recipient at fault*—(1) *Applicability*. This paragraph applies if:

(i) At the time of the damage, loss, or theft, the recipient does not have a control system in effect as required by § 3015.169, and

(ii) The damage, loss, or theft is not due to an act of God.

(2) *Equipment replaced*. If the equipment is replaced, the replacement is governed by § 3015.167. When that happens, the market value of the original equipment at the time it was damaged, lost, or stolen is used instead of the amount received for trade-in or sale.

(3) *Equipment not replaced*. If the equipment is not replaced, the Federal government has a right to an amount calculated by multiplying the Federal share in the equipment by its market value at the time of damage, loss, or theft. The amount is reduced pro rata if part of the Federal share of the equipment comes from an award under which the exemption in § 3015.164 applied.

(4) *Other remedies*. The provisions in this paragraph (b) are in addition to other remedies available to the awarding agency if a recipient acquires equipment with grant support but fails to establish the control system required by § 3015.169.

(c) *Recipient not at fault*—(1) *Applicability*. This paragraph applies if:

(i) At the time of the damage, loss, or theft, the recipient does have a control system in effect as required by § 3015.169(c) or

(ii) The damage, loss, or theft is due to an act of God.

(2) *Recipient not compensated*. If the recipient is not compensated for the damage, loss, or theft, through insurance or some other means, there is no obligation to USDA for the equipment.

(3) *Recipient compensated*. If the recipient is compensated for the damage, loss, or theft and replaces the equipment, § 3015.167 applies to the replacement equipment. If the recipient is compensated but does not replace the

equipment, §3015.168 applies as though the recipient had sold the equipment. (All of §3015.168 applies including the rule permitting the amount due the Federal government to be reduced by 10 percent of the proceeds or $100, whichever is greater.) The amount received for trade-in or sale is considered the lesser of (i) the amount of compensation or (ii) the market value of the equipment at the time it was damaged, lost, or stolen.

(d) *Waivers.* The awarding agency may waive in whole or in part any provision of this section.

**§3015.171 Unused supplies.**

(a) If unused supplies exceeding $1,000 in total aggregate market value are left over upon termination or expiration of the grant or subgrant for which they were acquired and the supplies are not needed for any project or program currently or previously funded by the Federal government, the grant shall be credited by an amount computed by multiplying the Federal share of the supplies times the current market value or, if the supplies are sold, the proceeds from sale. If the supplies are sold, 10 percent of the proceeds may be deducted and retained from the credit, for selling and handling expenses.

(b) For possible exemptions from this section, see §3015.164.

**§3015.172 Federal share of real property, equipment, and supplies.**

This subpart contains principles necessary to determine the Federal (or non-Federal) share of real property, equipment or supplies.

(a) *General.* (1) Except as explained in the following paragraphs of this section, the Federal share of the property shall be the same percentage as the Federal share of the acquiring party's total cost under the grant during the grant or subgrant year (or other funding period) to which the acquisition cost of the property was charged. For this purpose, ''costs under the grant'' means allowable costs which are either supported by the grant or counted toward satisfying a cost-sharing or matching requirement of the grant.

(2) If the property is acquired by a subrecipient, the Federal share of the subrecipient's costs under the grant and hence of the property shall be calculated by multiplying the Federal share of the recipient's costs by the latter's share of the subrecipient's costs. (For example, if the Federal share of the recipient's costs is 50 percent and the subgrant bears only 50 percent of a subrecipient's costs, then the Federal share of that subrecipient's costs (and of the property acquired by that subrecipient) is 25 percent.)

(3) The provisions of some grant awards set different maximum percentages of Federal financial participation for different categories of costs. In these cases, for the purposes of this section, the costs in each category are considered as costs under a separate grant. If two categories have the same maximum percentage of Federal participation and costs in one category are permitted to count toward satisfying a cost-sharing or matching requirement of the other, they are a single category for the purposes of this rule. Also, all categories with a 100 percent rate are considered a single category for the purposes of this rule.

(b) *Property acquired only partly under a grant.* (1) Sometimes only a part of the acquisition cost of an item of property is supported as a direct cost by the grant or counted as a direct cost towards a cost-sharing or matching requirement. Occasionally, the amount paid for the property is only a part of its value. The remainder is donated as an in-kind contribution by the party that provided the property.

(2) To determine the Federal share of such property, first calculate the Federal share of the acquiring party's total costs under the grant as explained in paragraph (a) of this section. Next multiply that share by the percentage of the property's acquisition cost (or its market value, if the item was partly donated) which was supported as a direct cost by the grant or counted as a direct cost towards a cost-sharing or matching requirement.

(c) *Replacement equipment.* To calculate the Federal share of replacement equipment the following procedures shall be followed:

(1) *Step 1:* Determine the Federal share (percentage) of the equipment replaced.

(2) *Step 2:* Determine the percentage of the replacement equipment's costs that was covered by the amount received for trade-in or the sale proceeds from the equipment replaced.

(3) *Step 3:* Multiply the step 1 percentage by the step 2 percentage.

(4) *Step 4:* If an additional outlay for the replacement equipment was charged as a direct cost either to USDA grant funds or to required cost-sharing or matching funds, calculate the Federal share attributable to that additional outlay as explained in paragraph (b)(2) of this section. Add that additional percentage to the step 3 percentage.

### § 3015.173 Using or returning the Federal share.

(a) This section applies when, under § 3015.163, 3015.168 or 3015.170, the Federal government has a right to an amount of money upon disposal or loss, theft, or damage of property.

(b) If the recipient's project or program for which the property was acquired is still receiving grant support from the same Federal program, the awarding agency may authorize use of the net money due for allowable costs of that project or program.

(c) Otherwise, the net amount must be returned to the awarding agency by check or money order.

### § 3015.174 Subrecipient's share.

Where this subpart requires a sharing of the market value or sale proceeds of property acquired under a subgrant, the non-Federal share shall be proportionally divided between the recipient and the subrecipient. The subrecipient shall be entitled to the amount it would have received or retained if the award to it had been made directly by the Federal government. The remainder of the non-Federal share shall belong to the recipient.

### § 3015.175 Intangible personal property.

(a) *Inventions and Patents.* (1) If the recipient is a small business or nonprofit organization (including universities and other institutions of higher education), the allocation of rights in inventions produced under a grant or cooperative agreement shall be determined in accordance with the provisions of sections 200 through 206 of Pub. L. 96–517 (35 U.S.C. 200–206) and OMB Circular A–124.

(2) For all other recipients, the allocation of rights in inventions shall be determined in accordance with the ''Government Patent Policy'' (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983) and OMB Circular A–124.

(b) *Copyrights*—(1) *Applicability.* This section applies to the copyright in any original work of authorship prepared with grant support. Additionally, if ownership of a copyright or of any of the exclusive rights comprising a copyright are purchased with grant support, this section applies to the purchased copyright or rights.

(2) *Basic rules.* (i) USDA reserves a royalty-free, nonexclusive, and irrevocable license to exercise, and to authorize others to exercise, the rights for Federal Government purposes. Subject to this license, the owner is free to exercise, preserve, or transfer all its rights. The recipient shall ensure that no agreement is entered into for transferring the rights which would conflict with the nonexclusive license of USDA.

(ii) One way that USDA may exercise its nonexclusive license is to authorize exercise of the rights in another project or activity that receives or has received grant support from the Federal Government.

(iii) A recipient awarding a subgrant is allowed to impose subgrant terms reserving a nonexclusive license for itself, similar to the one reserved by this section for USDA, with respect to any copyright or rights subject to this section that arise under the subgrant.

[48 FR 35875, Aug. 8, 1983]

## Subpart S—Procurement

### § 3015.180 Scope and applicability.

(a) This subpart contains information for complying with Attachment 0, ''Procurement Standards'', of OMB Circulars A–102 and A–110. Circular A–102 covers grant and cooperative agreement programs with State and local governments and Indian Tribal governments. Circular A–110 covers grant and cooperative agreement programs with

institutions of higher education, hospitals, and other nonprofit organizations. Copies of both Circulars may be obtained from O&F.

(b) This subpart applies to recipient procurements (by purchase, rental, or barter) of supplies, equipment, and services (including construction).

(c) This subpart applies only to procurements that are supported in whole or in part by a grant or cooperative agreement.

(d) This subpart does not apply to procurements of land, existing land improvements or structures, or any other existing real property.

(e) The Attachment 0 of Circulars A–102 and A–110 apply to procurements under subgrants as well as grants.

**§3015.181 Standards of conduct.**

(a) Recipients shall maintain a written code or standards of conduct governing the performance of their officers, employees or agents engaged in awarding and administering contracts supported by Federal funds:

(1) No employee, officer or agent shall participate in the selection, award, or administration of contracts using Federal funds where to his knowledge, such employee, officer or agent or his immediate family, partners or organizations has a financial interest in, is negotiating with, or has any arrangements concerning prospective employment with the proposed contractor.

(2) The recipient's officers, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or proposed contractors.

(3) Provisions shall be made for disciplinary actions against the recipient's officers, employees, or agents or by contractors or their agents violating the standards of conduct.

(b) Awarding agencies may review the written standards of conduct to determine if they meet the minimum standards of Attachment 0 of OMB Circulars A–110 and A–102. Recipients will be notified of deficiencies and make corrective action.

**§3015.182 Open and free competition.**

All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value shall be conducted in a manner that provides maximum open and free competition.

**§3015.183 Access to contractor records.**

The Attachment 0 requires recipients to include in specified kinds of contracts a provision for access to the contractor's records by the recipient and the Federal government. The following applies to the provision:

(a) The provision must require the contractor to place the same provision in any subcontract which would have to have the provision were it awarded by the recipient.

(b) The provision must require retention of records for three years after final payment is made under the contract or subcontract and all pending matters are closed. The provision must also require that, if any audit, litigation, or other action involving the records is started before the end of the three year period, the records must be retained until all issues arising out of the action are resolved or until the end of the three year period, whichever is later.

(c) In contracts and subcontracts under a subgrant, the provision must require that access to the records be provided to the recipient as well as the subrecipient and the Federal government.

**§3015.184 Equal employment opportunity.**

(a) The Attachment 0 requires recipients to include in contracts in excess of $10,000 a provision requiring compliance with Executive Order 11246, concerning equal employment opportunity as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).

(b) If construction is to be assisted by a grant or subgrant, the Executive Order and the Department of Labor supplementing regulations apply, unless an exemption is granted by or under those regulations. Recipients shall observe all applicable requirements of the Order and regulations and

include in their nonexempt construction contracts the specific clauses prescribed by 41 CFR 60–1.4(b) and, if applicable, 41 CFR 60–4.3.

## Subpart T—Cost Principles

### § 3015.190 Scope.

This subpart makes the allowable costs incurred by the recipient the maximum amount of money a recipient is entitled to receive from USDA. In addition, this subpart identifies the principles to be used in determining allowable costs. These cost principles shall apply to transactions and activities conducted under grants, subgrants, cooperative agreements, cost-type contracts and cost-type subcontracts under grants.

(a) *Allowable costs.* Grant funds may be used only for allowable costs of the activities for which the grant was awarded. This means that the total amount of money that the recipient is entitled to receive from USDA may not exceed the allowable costs incurred by the recipient for those activities.

(b) The following rules apply in computing maximum allowable costs:

(1) *Third party in-kind contributions.* Because they are not allowable costs of the party that receives them, the value of third party in-kind contributions received may not be included in determining maximum allowable costs. However, as provided in Subpart G of this part, third party in-kind contributions may count towards satisfying a cost-sharing or matching requirement of the Federal grant.

(2) *Costs supported by another grant.* Allowable costs incurred by the recipient and supported by another Federal grant (or by a non-Federal grant) awarded to the recipient may not be included in determining maximum allowable costs. The basic intent of this rule is to prevent double compensation. It does not, however, prevent proration of costs that are allowable under two or more awards.

(3) *Costs used to match another Federal grant.* A cost that the recipient uses to meet a cost-sharing or matching requirement of one Federal grant may not count towards determining maximum allowable costs under another Federal grant, unless specifically authorized by a Federal statute.

(4) *Costs supported by general program income.* A grant may not pay for a cost which is supported by general program income earned by the recipient or by a subrecipient under the grant. Therefore, these costs may not be included in determining maximum allowable costs.

(5) *Use of money due Federal government.* In accordance with § 3015.173, an awarding agency, under certain circumstances, may authorize a recipient to use certain money due the Federal government for allowable costs of the project or programs, instead of returning the money to the Federal Government. Costs supported by the money may not be included as part of the maximum allowable costs charged to USDA.

(6) *Subgrant and contract costs.* The recipient's allowable costs include allowable outlays, if any, to its subrecipients and contractors. If the recipient pays a subrecipient more than the allowable costs incurred by the subrecipient, the excess is not an allowable cost of the recipient and may not be included as part of the maximum allowable costs charged to USDA. However, for cost-type contracts a reasonable fee or profit paid by the recipient to the contractor, in addition to the contractor's allowable costs, may be included in this maximum unless prohibited by the provisions of the grant award.

### § 3015.191 Governments.

(a) OMB Circular No. A–87, and any subsequent amendments to this Circular published in the FEDERAL REGISTER by OMB, shall be used in determining the allowable costs of activities conducted by governments.

(b) Additional amendments to the Circular, unless otherwise prescribed by OMB, shall go into effect at the start of a government's first fiscal year following the amendment's publication in the FEDERAL REGISTER.

### § 3015.192 Institutions of higher education.

(a) OMB Circular No. A–21, including any amendments to the Circular published in the FEDERAL REGISTER by OMB, shall be used in determining the allowable costs of activities conducted

by institutions of higher education (other than for-profit institutions).

(b) Additional amendments to the Circular, unless otherwise prescribed by OMB, shall go into effect at the start of an institution's first fiscal year following the amendment's publication in the FEDERAL REGISTER.

### §3015.193 Other non-profit organizations.

(a) OMB Circular No. A–122, including any subsequent amendments to the Circulars published in the FEDERAL REGISTER by OMB, shall be used in determining the allowable costs of activities conducted by nonprofit organizations under grants, cooperative agreements, cost reimbursement contracts, and other contracts in which costs are used in pricing, administration, or settlement. It does not apply to colleges or universities which are covered by Circular A–21; State, local and federally recognized Indian Tribal governments which are covered by Circular A–87, or hospitals.

(b) Future amendments to the Circular, unless otherwise prescribed by OMB, shall go into effect at the time the initial award is made to the recipient.

### §3015.194 For-profit organizations.

The principles to be used when determining the allowable costs of activities conducted by for-profit organizations are contained in the Federal Acquisition Regulation at 48 CFR Subpart 31.2. Exception: Independent research and development costs including any indirect costs allocable to them are unallowable. Independent research and development are defined in the Federal Acquisition Regulation at 48 CFR 31.205–18.

[60 FR 44124, Aug. 24, 1995]

### §3015.195 Subgrants and cost-type contracts.

USDA cost principles applicable to a cost-type contractor or a subrecipient will not necessarily be the same as those applicable to the recipient. For example, where a State government awards a subrecipient or cost-type contract to an institution of higher education, OMB Circular A–21 would apply to the costs incurred by the institution of higher education even though OMB Circular A–87 would apply to the costs incurred by the State.

### §3015.196 Costs allowable with approval.

Each set of cost principles specifically identifies certain costs that, in order to be allowable, must be approved by the awarding agency. Other costs do not require approval. The following procedures govern approval of these costs:

(a) When costs are allocated in accordance with a government-wide cost allocation plan or when treated as indirect costs, acceptance of the costs as part of the indirect cost rate or cost allocation plan shall constitute approval.

(b) (1) All direct costs must be approved in advance by the awarding agency.

(2) When costs are specified in the budget, approval of the budget shall constitute approval of the cost.

(3) Specific prior approval in writing from the awarding agency is required if the costs are not specified in the budget, or if there is no approved budget. For this purpose the prior approval procedures of Subpart M shall be followed, except that, for formula or mandatory grants, the awarding agency's written approval may be signed by any authorized official of the awarding agency.

(c) The awarding agency may waive or conditionally waive the requirement for its approval of the costs. A waiver, as such, shall be applicable only to the requirement for approval. If it is determined, by audit or otherwise, that the costs do not meet other requirements or tests for allowability specified by the applicable cost principles, such as reasonableness and necessity, the costs may be disallowed.

(d) In the case of subgrants and cost-type contracts, no approval shall be given which is inconsistent with the purpose or the provisions of the Federal grant.

## Subpart U—Miscellaneous

### § 3015.200 Acknowledgement of support on publications and audiovisuals.

(a) *Definitions.* Appendix A defines ''audiovisual,'' ''production of an audiovisual,'' and ''publication.''

(b) *Publications.* Recipients shall have an acknowledgement of awarding agency support placed on any publications written or published with grant support and, if feasible, on any publication reporting the results of, or describing, a grant-supported activity.

(c) *Audiovisuals.* Recipients shall have an acknowledgement of awarding agency support placed on any audiovisual which is produced with grant support and which has a direct production cost to the recipient of over $5,000. Unless the other provisions of the grant award make it apply, this requirement does not apply to:

(1) Audiovisuals produced under mandatory or formula grants or under subgrants.

(2) Audiovisuals produced as research instruments or for documenting experimentation or findings and not intended for presentation or distribution to the general public.

(d) *Waivers.* Awarding agencies may waive any requirement of this section.

### § 3015.201 Use of consultants.

(a) *Definition.* Appendix A defines ''consultant.''

(b) *Applicability.* This section applies only to the use of consultants whose fees are supported by a grant, subgrant, or cost-type contract.

(c) *Basic policy*—(1) *Prior approval.* Awarding agencies shall not require prior approval for the use of consultants.

(2) *Exceptions.* (i) In unusual cases, using a consultant may constitute a transfer of substantive programmatic work, which requires prior approval under discretionary grants.

(ii) Consulting fees paid by an organization to its own employees require prior approval.

(d) *Use of an organization's own employees*—(1) *Faculty members of education institutions.* Charges representing extra compensation (above base salary) paid by an educational institution to a salaried member of its faculty for consulting work are allowable only in unusual cases, and only if both of the following conditions exist:

(i) The consultation is across departmental lines or involves a separate or remote operation; and

(ii) The work performed by the consultant is in addition to his or her regular departmental load.

(2) *All other cases.* In all other cases, consulting fees paid in addition to salary by recipients or cost-type contractors to people who are also their employees may be supported by a grant, subgrant, or cost-type contract only in unusual cases, and only if all of the following three conditions exist:

(i) The policies of the recipient or contractor permit such consulting fee payments to its own employees regardless of whether Federal grant funds are involved;

(ii) The work involved is clearly outside the scope of the person's salaried employment; and

(iii) It would be inappropriate or not feasible to compensate for the additional work by paying additional salary to the employee.

(3) *Requirement for approval.* Consulting fees paid under this section must have a specific prior approval in writing from the Head of the recipient or contractor or from his or her designated representative. If the recipient or contractor is a government, the approval may be given by the Head (or a designated representative of the Head) of the government agency which is primarily responsible for administering or carrying out the project or program. If the designated representative is personally involved in the project or program under consideration, the approval may be given only by the Head. If the Head is personally involved in the project or program under consideration, prior approval from the awarding agency is required. Such prior approval must include a determination that the applicable requirements in paragraph (d) (1) or (2) of this section are present.

(e) *Documentation standards.* (1) Charges for consulting payments must be supported in the records of the recipient or cost-type contractor by an invoice from the consultant and a copy

of the written report (if a report is appropriate) or other documented evidence of the work performed from the consultant.

(2) If any of the following information is not shown on the invoice and/or report from the consultant, the information must be shown in a memorandum or other document prepared by the recipient or contractor for its files, or noted in handwriting on the consultant's invoice by the recipient or contractor. The memorandum, other document, or handwritten notation must be signed by an official of the recipient or contractor and show:

(i) The name of the consultant;

(ii) The nature of the services provided (such as statistical analysis of data, participation on project advisory committee, or specified medical services to eligible beneficiaries);

(iii) The relevance of the services to the project or program, if not apparent from the nature of the services; and

(iv) Whichever of the following is applicable:

(A) (If the fee was based on a rate per day or hours worked) the rate and the dates and/or hours worked;

(B) (If the fee was based on a rate per unit of service provided, such as the number of patients examined by a physician) the rate, the number of units of service provided, and the beginning and ending dates of the overall period of service; or

(C) (If the fee was determined on some other basis) the basis for determining the fee and the beginning and ending dates of the period in which services were provided.

### §3015.202 Limits on total payments to the recipient.

(a) This section summarizes the four most widely applicable limits on the total amount of money the recipient is entitled to receive from USDA as a result of a grant. It is permissible for the terms of a grant to provide one or more additional limits.

(b) For each grant, the lowest of the applicable limits is the one that governs the final settlement upon expiration or termination of the grant.

(c) The following two limits apply to every grant:

(1) The amount of Federal funds authorized.

(2) The Federal share of the allowable costs incurred by the recipient.

(d) Grants that require a specified percentage of cost-sharing or matching are subject to the limit described in Subpart G.

(e) For each budget period of an incrementally funded discretionary grant, the Federal share of that period's approved budget is a limit.

### §3015.203 [Reserved]

### §3015.204 Federal Register publications.

(a) *Program regulations.* Most grant programs have program-specific regulations, which are published in the FEDERAL REGISTER and codified in the *Code of Federal Regulations.* In some cases the program-specific regulations are promulgated in the form of agency directives or manuals which may be obtained from the awarding agency.

(b) *Program announcements.* For each program, the awarding agency may publish in the FEDERAL REGISTER one or more program announcements. Program announcements invite applications for one or more stated program objectives. They include at least the following information:

(1) An estimate of how much money will be available for competing awards, and the expected size of the awards, broken down by subprogram or priority area when appropriate;

(2) Who is eligible;

(3) How to obtain application kits;

(4) Where to submit applications; and

(5) The deadline for submitting applications.

(c) *Cooperative agreements.* If any or all of the awards are likely to be cooperative agreements rather than grants, the program announcement so states. In that case, if feasible, the program announcement also describes the anticipated substantial Federal involvement in performance. (This paragraph does not prevent the award of cooperative agreements under a program announcement that mentioned only grants. Nor does it prevent the award of grants under a program announcement that mentioned only cooperative agreements.)

(d) *Evaluation criteria.* The awarding agency publishes its criteria for evaluating grant applications either in the program regulations or the program announcement. If the criteria are not all equal in importance, their relative weights are also published. The criteria cover at least the following factors (except where the nature of the eligible projects makes one or more of these factors irrelevant):

(1) How well qualified the project's personnel will be;

(2) The adequacy of the applicant's facilities and resources;

(3) The adequacy of the project plan or methodology;

(4) The cost-effectiveness of the project; and

(5) How closely the project objectives fit the objectives for which applications were invited.

(e) *Funding priorities.* If the awarding agency will give priority to one or more particular kinds of projects, the priority (and how it will be applied in deciding which applications to fund) is described in the program announcement.

(f) *Competing continuations vs. ''new'' projects.* If the awarding agency will give a preference to competing continuation applications over applications for projects not already receiving support under the program, or vice versa, the preference is described in the program announcement.

(g) *Programs with few potential applicants.* In some programs the number of potential applicants is relatively small. (For example, in some programs only the States are eligible.) In these situations the awarding agency may send a copy of the program announcement directly to every potential applicant instead of publishing it in the FEDERAL REGISTER.

(h) *Register—Other information which is available.* In addition to the items specified above, each awarding Agency makes available to the public the following information and materials for each program:

(1) A copy of, or reference to, the authorizing statutes for the program;

(2) All guidelines of general applicability for administration of the program;

(3) A description of the procedures the awarding agency will use for evaluating applications; and

(4) Any other information that the awarding agency believes will be helpful.

(i) *Consulting with applicants.* Each awarding agency publishes as much information as practicable to reduce the need for consultation by applicants. If the awarding agency does provide consultation, its staff members try to give consistent interpretations and fair treatment to all requestors.

### § 3015.205 General provisions for grants and cooperative agreements with institutions of higher education, other nonprofit organizations, and hospitals.

(a) *Scope.* This section sets forth general provisions which apply, in whole or in part, to grants and cooperative agreements awarded by USDA to institutions of higher education, other nonprofit organizations, and hospitals. (General provisions applicable to grants and cooperative agreements with State and local governments are set forth in the Office of Management and Budget (OMB) Circular A–102, Attachment M and are made a condition of each grant or cooperative agreement awarded to such recipients). Any statutory provisions that apply to the particular agreement at hand, that are not included herein, shall be made a part of the award document. All administrative requirements contained in subparts A through U of 7 CFR part 3015 shall apply, as appropriate.

(b) *Assurances and compliance.* It shall be a condition of every USDA grant or cooperative agreement awarded to institutions of higher education, other nonprofit organizations and hospitals that the recipient assure and certify compliance with the following general requirements to the extent applicable:

(1) It will comply with the following provisions regarding the rights and welfare of human subjects:

(i) The recipient organization is responsible for safeguarding the rights and welfare of any human subjects involved in research, development, and related activities supported by this agreement. The recipient organization may conduct research involving human

subjects only as described in the proposal and as approved by the recipient organization's cognizant Institutional Review Board. Prior to conducting such research, the recipient organization shall obtain and document a legally sufficient informed consent from each human subject involved. No such informed consent shall include any exculpatory language through which the subject is made to waiver, or to appear to waiver, any of his or her legal rights, including any release of the recipient organization or its agents from liability for negligence.

(ii) The recipient organization agrees to comply with U.S. Department of Health and Human Services' regulations regarding human subjects, appearing in 45 CFR part 46 (as amended).

(iii) It will comply with USDA policy which is to assure that the risks do not outweigh either potential benefits to the subjects or the expected value of the knowledge sought.

(iv) Selection of subjects or groups of subjects shall be made without regard to sex, race, color, religion, or national origin unless these characteristics are factors to be studied.

(2) It will comply with the Animal Welfare Act, as amended, 7 U.S.C. 2131, *et seq.*, and the regulations promulgated thereunder by the Secretary of Agriculture (9 CFR, Subchapter A) pertaining to the care, handling, and treatment of warm-blooded animals held or used for research, teaching, or other activities supported by Federal funds. Recipient organizations may request registration of facilities and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the Region in which their facility is located. The location of the appropriate APHIS Regional Office, as well as information concerning this requirement, may be obtained by contacting the Senior Staff Officer, Animal Care Staff, USDA/APHIS, Federal Center Building, Hyattsville, Maryland 20782.

(3) It will assume primary responsibility for implementing proper conduct or recombinant DNA research and it will comply with the national Institute of Health Guidelines for Recombinant DNA Research, as revised.

(4) It will comply with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. 1517, which requires:

(i) Any air transportation to, from, between, or within a country, other than the U.S., of persons or property, the expense of which will be assisted by USDA funding, to be performed on a U.S.-flag carrier if service provided by such carrier is ''available.''

(ii) For the purposes of this requirement:

(A) Passenger or freight service by a certificated air carrier is considered ''available'' even though:

(*1*) Comparable or a different kind of service by a noncertificated air carrier costs less; or

(*2*) Service by a noncertificated air carrier can be paid for in excess foreign currency; or

(*3*) Service by a noncertificated air carrier is preferred by the recipient organization contractor or traveler needing air transportation.

(B) Passenger service by a certificated air carrier is considered to be ''unavailable'':

(*1*) When the traveler, while enroute, has to wait six hours or more for an available U.S. carrier; or

(*2*) When any flight by a U.S. carrier interrupted by a stop anticipated to be six hours or more for refueling, reloading repairs, etc., and no other flight by a U.S. carrier is available during the six-hour period; or

(*3*) When the flight by a U.S. carrier takes 12 or more hours longer than a foreign carrier.

(5) It possesses legal authority to enter into the agreement; that a resolution, motion or similar action has been duly adopted or passed as an official act of its governing body, authorizing the acceptance of the agreement including all understandings and assurances contained therein and directing and authorizing the person identified as the official representative of the recipient organization to act in connection with the agreement and to provide such additional information as may be required.

(6) It will comply with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and in accordance with Title VI of that Act, no person in the United States

shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

(7) It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

(8) It will give USDA, the awarding agency or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers or documents related to the award.

(9) It will comply with all requirements imposed by the awarding agency concerning special requirements of law, program requirements, and other administrative requirements.

(10) It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of violating facilities and that it will notify the awarding agency of the receipt of any communication from the Director of the EPA, Office of Federal Activities, indicating that a facility to be utilized in the project is under consideration for listing by the EPA.

(11) It will comply with the flood insurance purchase requirements of the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Protection Act of 1973, 42 U.S.C. 4001–4127. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

(12) It will assist the awarding agency in its compliance with Section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. 470, Executive Order 11593, and the Archaeological and Historic Preservation Act of 1974, 16 U.S.C. 496a–1, *et. seq.*, by (i) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR 800.8) by the activity, and notifying the awarding agency of the existence of any such properties, and by (ii) complying with all requirements established by the awarding agency to avoid or mitigate adverse effects upon such properties.

(13) It will comply with Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et. seq.*, which prohibits discrimination on the basis of sex in Federally assisted education programs.

(14) It will comply with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794. Section 504 provides that no otherwise qualified handicapped individual shall solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(15) It will comply with the Age Discrimination Act of 1975, 42 U.S.C. 6101–6107, which prohibits unreasonable discrimination based on age, in programs or activities receiving Federal financial assistance.

(16) It is in compliance with the Clean Air Act of 1970, 42 U.S.C. 7401 *et seq.*, which requires federally assisted activities to be in conformance with State (Clean Air) Implementation Plan.

(17) It will establish safeguards to ensure that USDA funds are properly spent. In particular, except nonprofit organizations which are subject to the lobbying provisions of paragraph B.21. of OMB Circular A–122, it will assure that funds are not used for partisan or political activity purposes.

(c) USDA awarding agencies shall obtain the required assurances and certifications by including the following clause in each grant or cooperative agreement awarded to institutions of higher education, other nonprofit organizations and hospitals:

As a condition of this grant or cooperative agreement, the recipient assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those set out in 7 CFR 3015.205(b), which hereby are incorporated in this agreement by reference, and such other statutory provisions as are specifically set forth herein.

[48 FR 27222, June 14, 1983, as amended at 49 FR 38534, Oct. 1, 1984]

## Subpart V—Intergovernmental Review of Department of Agriculture Programs and Activities

AUTHORITY: E. O. 12372, July 14, 1982 (47 FR 30959), as amended Apr. 8, 1983 (48 FR 15887): Sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec. 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3334).

SOURCE: 48 FR 29112, June 24, 1983, unless otherwise noted.

### §3015.300 Purpose.

(a) The regulations in this part implement Executive Order 12372, ''Intergovernmental Review of Federal Programs'', issued July 14, 1982, and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on State processes and on State, arewide, regional and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) The regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

### §3015.301 Definitions.

*Department* means the U.S. Department of Agriculture.

*Order* means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled *Intergovernmental Review of Federal Programs.*

*Secretary* means the Secretary of the U.S. Department of Agriculture or an official or employee of the Department acting for the Secretary under a delegation of authority.

*State* means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Island, or the Trust Territory of the Pacific Islands.

### §3015.302 Applicability.

The Secretary publishes in the FEDERAL REGISTER a list of the Department's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

### §3015.303 Secretary's general responsibilities.

(a) The Secretary provides opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance from, or direct Federal development by, the Department.

(b) If a State adopts a process under the Order to review and coordinate proposed Federal financial assistance and direct Federal development, the Secretary, to the extent permitted by law:

(1) Uses the State process to determine official views of State and local elected officials;

(2) Communicates with State and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the State process;

(4) Allows the States to simplify and consolidate existing Federally required State plan submissions;

(5) Where State planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of State plans for Federally required State plans;

(6) Seeks the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Supports State and local governments by discouraging the reauthorization or creation of any planning organization which is Federally-funded, which has a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

### § 3015.304 Federal interagency coordination.

The Secretary, to the extent practicable, consults with and seeks advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

### § 3015.305 State selection of programs and activities.

(a) A State may select any program or activity published in the FEDERAL REGISTER in accordance with § 3015.302 of this subpart for intergovernmental review under these regulations. Each State, before selecting programs and activities, shall consult with local elected officials.

(b) Each State that adopts a process shall notify the secretary of the Department's programs and activities selected for that process.

(c) A State may notify the Secretary of changes in its selections at any time. For each change, the State shall submit to the Secretary an assurance that the State has consulted with elected local officials regarding the change. The Department may establish deadlines by which States are required to inform the Secretary of changes in their program selections.

(d) The Secretary uses a State's process as soon as feasible, depending on individual programs and activities, after the Secretary is notified of its selections.

### § 3015.306 Communication with State and local elected officials.

(a) The Secretary provides notice to directly affected State, areawide, regional, and local entities in a State of proposed Federal financial asssistance or direct Federal development if:

(1) The State has not adopted a process under the Order; or

(2) The assistance or development involves a program or an activity that is not covered under the State process.

(b) This notice may be made by publication in the FEDERAL REGISTER or other appropriate means, which the Department in its discretion deems appropriate.

(c) In order to facilitate communication with State and local officials the Secretary has established an office within the Department to receive all communications pertinent to this Order. All communications should be sent to the Office of Finance and Management, Room 143–W, Administration Building, Washington, DC 20250, Attention: E.O. 12372.

### § 3015.307 State comments on proposed Federal financial assistance and direct Federal development.

(a) Except in unusual circumstances, the Secretary gives State processes or directly affected State, areawide, regional, and local officials and entities:

(1) At least 30 days from the date established by the Secretary to comment on proposed Federal financial assistance in the form of noncompeting continuation awards; and

(2) At least 60 days from the date established by the Secretary to comment on proposed direct Federal development or Federal financial assistance other than noncompeting continuation awards.

(b) This section also applies to comments in cases in which the review, coordination and communication with the Department have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Development Act shall allow areawide

agencies a 60-day opportunity for review and comment.

**§3015.308 Processing comments.**

(a) The Secretary follows the procedures in §3015.309 if:

(1) A State office or official is designated to act as a single point of contact between a State process and all Federal agencies; and

(2) That office or official transmits a State process recommendation for a program selected under §3015.305.

(b)(1) The single point of contact is not obligated to transmit comments form State, areawide, regional or local officials and entities where there is no State process recommendation.

(2) If a State process recommendation is transmitted by a single point of contact, all comments from State, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a State has not established a process, or is unable to submit a State process recommendation, State, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department.

(d) If a program or activity is not selected by a State process, State, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. In addition, if a State process recommendation for a non-selected program or activity is transmitted to the Department by the single point of contact, the Secretary follows the procedures of §3015.309 of this subpart.

(e) The Secretary considers comments which do not constitute a State process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of §3015.309 of this subpart, when such comments are provided by a single point of contact by the applicant, or directly to the Department by a commenting party.

**§3015.309 Accommodation of intergovernmental concerns.**

(a) If a State process provides a State process recommendation to the Department through its single point of contact, the Secretary either—

(1) Accepts the recommendations;

(2) Reaches a mutually agreeable solution with the State process; or

(3) Provides the single point of contact with a written explanation of the decision, as the Secretary in his or her discretion deems appropriate. The Secretary may also supplement the written explanation by also providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification five days after the date of mailing of such notification.

**§3015.310 Interstate situations.**

(a) The Secretary is responsible for:

(1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;

(2) Notifying appropriate officials in States which have adopted a process and which selected the Department's program or activity;

(3) Making efforts to identify and notify the affected State, areawide, regional, and local officials and entities in those States that have not adopted a process under the Order or do not select the Department's program or activity; and

(4) Responding, pursuant to §3015.309 of this subpart, if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in §3015.309 if a State process provides

a State process recommendation to the Department through a single point of contact.

### § 3015.311 Simplification, consolidation, or substitution of State plans.

(a) As used in this section:

(1) *Simplify* means that a State may develop its own format, choose its own submission date, and select the planning period for a State plan.

(2) *Consolidate* means that a State may meet statutory and regulatory requirements by combining two or more plans into one document and that the State can select the format, submission date, the planning period for the consolidated plan.

(3) *Substitute* means that a State may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a State may decide to try to simplify, consolidate, or substitute Federally required State plans without prior approval by the Secretary.

(c) The Secretary reviews each State plan a State has simplified, consolidated or substituted and accepts the plan only if its contents meet Federal requirements.

### § 3015.312 Waivers.

In an emergency, the Secretary may waive any provision of these regulations.

## APPENDIX A TO PART 3015—DEFINITIONS

Section I *''Grant'' and ''Cooperative Agreement''*

(a) ''Grant'' unless qualified by ''non-Federal'' means an award by the Federal government of money, property instead of money, services, or anything of value, to the State or other recipient, with the following characteristics:

(1) The principal purpose of the award is to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal government; and

(2) At the time the award is made, no substantial involvement is anticipated between the executive agency, acting for the Federal government, and the State or local government or other recipient during performance of the contemplated activity.

(b) ''Cooperative agreement'' has the same meaning as ''grant,'' except that, at the time a cooperative agreement is awarded, substantial involvement is anticipated between the executive agency, acting for the Federal government, and the State or local government or other recipient during performance of the contemplated activity.

(c) ''Grants'' and ''cooperative agreements'' do not include technical assistance, which provides services instead of money; revenue sharing; loans; loan guarantees; capital contributions to loan funds; interest subsidies; insurance; or direct appropriations. (See the definition of ''Non-Federal grant'' in Section II of this appendix.)

Section II *Other Definitions.*

''Acquisition'' of property includes purchase, construction, or fabrication of property. It does not include rental of property or alterations and renovations of real property.

''Acquisition cost'' of an item of purchased equipment means the net invoice price of the equipment. It includes the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment useable 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 in or excluded from the unit acquisition cost in accordance with the regular accounting practices of the organization purchasing the equipment.

If an item of equipment is acquired by trading in another item and paying an additional amount, ''acquisition cost'' means the amount received for trade-in plus the additional outlay. (See the definition of ''amount received for trade-in.'')

For purposes of the rules on equipment and supplies, ''acquisition cost'' of a copy of a work of authorship (such as a book, print of a motion picture, or tape of a television program) refers to the cost of fabricating or purchasing the individual copy, considered as a material object. It does not include the cost of developing, or acquiring rights to, the work embodied in the copy.

''Advance by Treasury check'' is a payment made by a Treasury check to a recipient of a grant or cooperative agreement, before payments are made by the recipient of the grant or cooperative agreement. Advances by Treasury check are based on either a periodic request from the recipient or a predetermined payment schedule.

''Amount received for trade-in'' of an item of equipment traded in for replacement equipment means the amount that would have been paid for the replacement equipment without a trade-in, minus the amount paid with the trade-in. The term refers to the actual difference, not necessarily the

trade-in value, shown on an invoice. For example, suppose that a recipient can buy a new machine for $5,000 in cash. The recipient actually buys this machine by trading in a used machine and paying $3,000 in cash. In this case, the amount received for trade-in would be $2,000 ($5,000 minus $3,000) regardless of the trade-in allowance shown on the invoice.

''Approved budget'' means a budget (including any revised budget) which has been approved in writing by the awarding agency. (See the definition of ''budget.'')

''Audiovisual'' means a product containing visual imagery or sound or both. Examples of audiovisuals are motion pictures, live or prerecorded radio or television programs, slide shows, filmstrips, audio recordings, and multimedia presentations.

''Awarding agency'' means (1) for grants and cooperative agreements, the USDA agency making the award, and (2) for subgrants, the recipient.

''Bid guarantee'' means a firm commitment such as a bid bond, certified check, or other negotiable instrument, accompanying a bid as assurance that the bidder will, if its bid is accepted, execute the required contractual documents within the time specified.

''Budget'' means the recipient's financial expenditure plan approved by the awarding agency to carry out the purposes of the Federally-supported project. The budget is comprised of both the Federal share and any non-Federal share of such plan and any subsequent authorized rebudgeting of funds.

For those programs that do not involve Federal approval of the non-Federal share of costs, such as research grants, the term ''budget'' means the financial expenditure plan approved by the awarding agency including any subsequent authorized rebudgeting of funds, for the use of Federal funds only. Any expenditures charged to an approved budget consisting of Federal and non-Federal shares are deemed to be supported by the grant in the same proportion as the percentage of Federal/non-Federal participation in the overall budget.

''Budget period'' means the period specified in the grant or cooperative agreement during which Federal funds awarded are authorized to be expended, obligated, or firmly committed by the recipient for the purposes specified in the agreement.

''Closeout'' of a grant or cooperative agreement means the process by which an awarding agency determines that all applicable administrative actions and all required work of the grant or cooperative agreement have been completed by the recipient and the awarding agency.

''Consultant'' means a person who gives advice or services for a fee, but not as an employee. The term includes guest speakers when not acting as employees of the party that engages them. Note that in unusual cases it is possible for a person to be both an employee and a consultant at the same time. (See §3015.201.)

''Contract'' means a procurement contract awarded under a grant, cooperative agreement, or subgrant; and ''subcontract'' means a procurement subcontract under such a contract. Procurement contracts and subcontracts are ones which place the parties in a buyer-seller relationship, regardless of the label used by the parties to describe the relationship (e.g., purchase-of-service agreement). The terms ''contract'' and ''subcontract'' do not include any agreements between organizational components of the same legal entity, even if one of the components provides property or services to or for the other. (See definitions of ''subgrant,'' ''cost-type contract,'' and ''fixed price contract.'')

''Cost-sharing'' and ''matching'' each mean the value of third party in-kind contributions plus that portion of the allowable costs of recipients not supported by the Federal Government. (The terms ''cost-sharing'' and ''matching,'' in this part, are synonymous.)

''Cost-type contract'' means a contract or subcontract in which the contractor or subcontractor is paid on the basis of the costs it incurs. The term includes cost-plus-fixed-fee contracts and subcontracts. (However, the term does not include any subcontracts under a ''fixed-price contract.'')

''Discretionary'' grants and cooperative agreements are ones which a Federal statute authorizes but does not require USDA to award.

''Equipment'' means an article of tangible personal property that has a useful life of more than two years and acquisition cost of $500 or more. Any recipient may use its own definition of equipment if its definition would at least include all items of equipment as defined here.

''Expenditure report'' means (1) for nonconstruction awards, the ''Financial Status Report'' (or other equivalent report); (2) for construction awards, the ''Outlay Report and Request for Reimbursement for Construction Programs'' (or other equivalent report).

''Federal funds authorized'' means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount is a limit on the total amount of money that the recipient is entitled to receive from the Federal Government as a result of the award. In addition to this limit, there are other limits. Refer to §3015.202 for a summary of these.

''Federally recognized Indian Tribal government'' means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified

by the Secretary of the Interior as eligible for the special programs and services provided by him or her through the Bureau of Indian Affairs.

''Fidelity bond'' means a bond indemnifying the recipient against losses resulting from the fraud or lack of integrity, honesty or fidelity of one or more employees, officers or other persons holding a position of trust.

''Fixed-price contract'' means any contract except a cost-type contract. The term includes firm-fixed price contracts. It also includes contracts under which the contractor is paid at a fixed rate per unit of service or unit of labor time. (See the definitions of ''contract'' and ''cost-type contract.'')

''General program income'' means all program income except the special categories treated in §§3015.43 through 3015.46. The term ''general program income'' is limited to amounts that accrue to a recipient of grant or cooperative agreement during the period of Federally assisted support, or to a subrecipient during the period of sub-award support.

''Local government'' means a local unit of government including specifically, a county, municipality, city, town, township, local public authority, school district, special district, intra-state district, council of governments (whether or not incorporated as a nonprofit corporation under State law), sponsor or sponsoring local organization of a watershed project (as defined in 7 CFR 620.2, 40 FR 12472, March 19, 1974), any other regional or interstate government entity, or any agency or instrumentality of a local government.

''Mandatory'' or ''formula'' grants and cooperative agreements are ones which a Federal statute requires USDA to award if the applicant meets specified conditions.

''Non-Federal grant'' means an award of financial assistance in the form of money which includes no Federal funds, and for which the recipient must account to the donor on an actual cost basis. The term does not include any award that would be excluded from the definitions of ''grant'' and ''cooperative agreement'' if it were made by the Federal government.

''Obligations'' means the amounts of orders placed, contracts and subgrants awarded, services received, and similar transactions during a given period, which will require payment during the same or future period.

''O&F'' means the Office of Operations and Finance, which is an organizational component in USDA reporting to the Assistant Secretary for Administration.

''OMB'' means the Office of Management and Budget in the Executive Office of the President.

''Outlays'' means charges made to the grant project or program. Outlays may be reported on a cash or accrual basis.

''Payment bond'' means a bond executed in connection with a contract, to assure payment as required by law of all persons supplying labor and materials in the execution of the work provided in the contract.

''Percentage-of-completion method'' refers to a system under which payments are made for construction work according to the percentage of completion of the work, instead of the recipient's rate of disbursements.

''Performance bond'' means a bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

''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 patents, inventions, and copyrights.

''Production of an audiovisual'' means any of the steps that lead to a finished audiovisual, including design, layout, script-writing, filming, editing, fabrication, sound recording, or taping. The term does not include the placing of captions for the hearing impaired on films or videotapes not originally produced for use with the hearing impaired.

''Program income'' means gross income earned by a recipient from activities supported by a grant or cooperative agreement. (See definition of ''supported by a grant or cooperative agreement.'') It includes but is not limited to income in the form of fees for services performed during the life of the grant, cooperative agreement, or subgrant, proceeds from sale of tangible personal or real property, usage or rental fees, and patent or copyright royalties. If income meets this definition, it shall be considered program income regardless of the method used to calculate the amount paid to the recipient whether, for example, by a cost-reimbursement method or fixed price arrangement. Nor will the income's classification as program income be affected by the fact that the recipient earns it from a procurement contract awarded to the recipient (1) by the Federal government or (2) by another recipient acting under another Federal grant, cooperative agreement, or subgrant.

The following are not considered program income:

(1) ''Revenues'' raised by a government recipient under its governing powers, such as taxes, special assessments, levies, and fines. (However, the receipt and expenditure of these revenues shall be recorded as a part of the transactions of the Federally-assisted project or program when the revenues are specifically earmarked for the project in accordance with the terms of the grant, cooperative agreement, or subgrant.)

(2) Tuition and related fees received by an institution of higher education for a regularly offered course taught by an employee

performing under a grant, cooperative agreement, or subgrant.

(3) Income earned by contractors or subcontractors.

(4) Internal reimbursements or transfers of funds between organizational components of the same legal entity (e.g., between agencies of the same government).

(5) Third party in-kind contributions.

(6) Gifts or financial assistance from another source, such as (i) a non-Federal grant, (ii) another Federal grant, and (iii) charitable contributions (whether or not for a restricted purpose), and

(7) Interest or other investment income earned from investing advances of Federal cash. (This kind of income is treated in §3015.46.)

''Project period'' means the total time for which the recipient's project or program is approved for support including any extensions. Project periods may consist of one or more budget periods.

''Publication'' means a published book, periodical, pamphlet, brochure, flier, or similar item. It does not include any audiovisuals.

''Real property'' means land, land improvements, structures, and things attached to them so as to become a part of them. Movable machinery and other kinds of equipment are not real property. If a question comes up about whether certain property should be classified as real property, the law of the State or foreign country in which the property is located governs.

''Recipient'' means a State or local government, Federally recognized Indian Tribe, university, non-profit, for profit, or other organization that is a recipient of grants or cooperative agreements from a USDA agency.

''Replacement equipment'' means property acquired to take the place of other equipment. To qualify as replacement equipment, it must serve the same function as the equipment replaced and must be of the same nature or character, although not necessarily the same model, grade, or quality.

''State'' means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory, possession, or trust territory of the United States, or any agency or instrumentality of a State. The term does not include local governments.

''Subgrant'' means an award of money, or property instead of money, which:

(1) Is made under a grant or cooperative agreement by the recipient of the grant or cooperative agreement; and

(2) Is made principally to accomplish a purpose of support of stimulation rather than to establish a buyer-seller relationship between the two parties.

Any award which meets that definition is a subgrant even if the parties to the award use some other label such as ''grant,'' ''agreement,'' ''cooperative agreement,'' ''contract,'' ''allotment,'' or ''delegation agreement.'' Also, if the award meets that definition, it is a subgrant whether or not the awarding agency is expected to be substantially involved in its performance. However, the term ''subgrant'' does not include any type of assistance which is excluded from the definitions of ''grant'' and ''cooperative agreement'' by Section I(c) of this Appendix.

''Supplies'' means all tangible personal property other than equipment.

''Supported by a grant or cooperative agreement,'' as applied to a cost or an activity, means that the cost or the cost of the activity is entirely or partly (1) treated as a direct cost under a grant, cooperative agreement, subgrant, or cost-type contract, and (2) either supported by Federal funds or counted towards a Federal cost-sharing or matching requirement.

''Suspension'' of an award means temporary withdrawal of the recipient's authority to obligate the funds awarded pending corrective action by the recipient or a decision to terminate the award.

''Termination'' of an award means permanent withdrawal of the recipient's authority to obligate previously awarded funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the recipient.

''Termination'' does not include:

(a) Withdrawal of the unobligated balance upon expiration of award;

(b) Refusal by the awarding agency to extend an award or to award additional funds (such as refusal to make a competing or noncompeting continuation, renewal, extension, or supplemental award);

(c) Annulment, i.e., voiding of an award upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from inception;

(d) Withdrawal of surplus Federal funds from a discretionary grant or any analogous withdrawal of funds by a recipient from a subrecipient; or

(e) Withdrawal from a mandatory or formula grant of surplus Federal funds authorized which the recipient will not obligate during the fiscal year, or any analogous withdrawal of funds by a recipient from a subrecipient.

''Terms'' of a grant, cooperative agreement, subgrant, or contract means all rights and duties created by the award, whether stated in statute, this part or other regulations, the award document itself, or any other document.

''Third party'' means, with respect to a grant or cooperative agreement, any entity except (1) the Federal government, (2) the recipient of the cooperative agreement, and (3) subrecipients under that grant or cooperative agreement. Note that contractors of recipients are third parties under this definition, although subrecipients are not.

''Third party in-kind contributions'' means property or services benefiting the federally assisted project or program which are contributed by third parties without charge. Note that the term does not include any costs incurred by the recipient or subrecipient.

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

''Unobligated balance'' is the portion of Federal funds authorized which has not been obligated by the recipient. It is calculated by subtracting the Federal share of the recipient's cumulative obligations from the cumulative Federal funds authorized.

## APPENDIX B TO PART 3015—OMB CIRCULAR A–128, ''AUDITS OF STATE AND LOCAL GOVERNMENTS''

EXECUTIVE OFFICE OF THE PRESIDENT

*Office of Management and Budget*

Circular No. A–128

April 12, 1984

To the Heads of Executive Departments and Establishments.

Subject: Audits of State and Local Governments.

1. *Purpose.* This Circular is issued pursuant to the Single Audit Act of 1984, Pub. L. 98–502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Supersession.* The Circular supersedes Attachment P, ''Audit Requirements,'' of Circular A–102, ''Uniform requirements for grants to State and local governments.''

3. *Background.* The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive $100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget to prescribe policies, procedures and guidelines to implement the Act. It specifies that the Director shall designate ''cognizant'' Federal agencies, determine criteria for making appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to participate in contracts for single audits.

4. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this Circular.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law or in Circular A–102, ''Uniform requirements for grants to State or local governments.''

5. *Definitions.* For the purposes of this Circular the following definitions from the Single Audit Act apply:

a. *Cognizant agency* means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 11 of this Circular.

b. *Federal financial assistance* means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. *Federal agency* has the same meaning as the term 'agency' in section 551(1) of Title 5, United States Code.

d. *Generally accepted accounting principles* has the meaning specified in the generally accepted government auditing standards.

e. *Generally accepted government auditing standards* means the *Standards For Audit of Government Organizations, Programs, Activities, and Functions,* developed by the Comptroller General, dated February 27, 1981.

f. *Independent auditor* means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

g. *Internal controls* means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resource use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

h. *Indian tribe* means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. *Local government* means any unit of local government within a State, including a county, a borough, municipalitity, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. *Major Federal Assistance Program,* as defined by Pub. L 98–502, is described in the Attachment to this Circular.

k. *Public accountants* means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has governmental functions and any Indian tribe.

m. *Subrecipient* means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

6. *Scope of audit.* The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this Circular. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of Circular A–110, *Uniform requirements for grants to universities, hospitals, and other nonprofit organizations.*

d. The auditor shall determine whether:

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

7. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

8. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State

and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expenditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews of other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

—The amounts reported as expenditures were for allowable services, and

—The records show that those who received services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met,

—Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and

—Amounts claimed or used for matching were determined in accordance with OMB Circular A–87, ''Cost principles for State and local governments,'' and Attachment F of Circular A–102, ''Uniform requirements for grants to State and local governments.''

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments*, issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

9. *Subrecipients.* State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. Determine whether State or local subrecipients have met the audit requirements of this Circular and whether subrecipients covered by Circular A–110, ''Uniform requirements for grants to universities, hospitals, and other nonprofit organizations,'' have met that requirement;

b. Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this Circular, Circular A–110, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. Require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this Circular.

10. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this Circular shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this Circular do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this Circular do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in addition to the audits made by recipients pursuant to this Circular

shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

11. *Cognizant agency responsibilities.* The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this Circular.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizance responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this Circular; so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

12. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 13(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

13. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this Circular. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance.* Federal programs or grants that have not been assigned a catalog number shall be identified under the caption ''other Federal assistance.''

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

—A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

—Negative assurance on those items not tested;

—A summary of all instances of noncompliance; and

—An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 13f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

14. *Audit Resolution.* As provided in paragraph 11, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on case-by-case basis by a case-by-case basis by agreement among the agenices concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

15. *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

16. *Audit Costs.* The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provision of Circular A–87, ''Cost principles for State and local governments.''

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

17. *Sanctions.* The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropropriate sanctions including:

—Withholding a percentage of assistance payments until the audit is completed satisfactorily,

—Withholding or disallowing overhead costs, and

—Suspending the Federal assistance agreement until the audit is made.

18. *Auditor Selection.* In arranging for audit services State and local governments shall follow the procurement standards prescribed by Attachment O of Circular A–102, ''Uniform requirements for grants to State and local governments.'' The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

19. *Small and Minority Audit Firms.* Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for large audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

20. *Reporting.* Each Federal agency will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of this Circular. The report must identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with the Circular.

21. *Regulations.* Each Federal agency shall include the provisions of this Circular in its regulations implementing the Single Audit Act.

22. *Effective date.* This Circular is effective upon publication and shall apply to fiscal years of State and local governments that begin after December 31, 1984. Earlier implementation is encouraged. However, until it is implemented, the audit provisions of Attachment P to Circular A–102 shall continue to be observed.

23. *Inquiries.* All questions or inquiries should be addressed to Financial Management Division, Office of Management and Budget, telephone number 202/395–3993.

24. *Sunset review date.* This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance.

David A. Stockman,
Director.

*Definition of Major Program as Provided in Pub. L. 98–502*

''Major Federal Assistance Program,'' for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

| Total expenditures of Federal financial assistance for all programs | | Major federal assistance program means any program that exceeds |
|---|---|---|
| More than | But less than | |
| $100 million | $1 billion | $3 million |
| 1 billion | 2 billion | 4 million |
| 2 billion | 3 billion | 7 million |
| 3 billion | 4 billion | 10 million |
| 4 billion | 5 billion | 13 million |
| 5 billion | 6 billion | 16 million |
| 6 billion | 7 billion | 19 million |
| Over 7 billion | | 20 million |

[50 FR 28763, July 16, 1985]

# PART 3016—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

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SOURCE: 53 FR 8044, 8087, Mar. 11, 1988, unless otherwise noted.

EDITORIAL NOTE: For additional information, see related documents published at 49 FR 24958, June 18, 1984, 52 FR 20178, May 29, 1987, and 53 FR 8028, March 11, 1988.

## Subpart A—General

### § 3016.1 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

### § 3016.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

### § 3016.3 Definitions.

As used in this part:

*Accrued expenditures* mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

*Accrued income* means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

*Acquisition cost* of an item of purchased equipment means the net invoice unit price of the property 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 grantee's regular accounting practices.

*Administrative* requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from *programmatic* requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

*Awarding agency* means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

*Cash contributions* means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

*Contract* means (except as used in the definitions for *grant* and *subgrant* in this section and except where qualified by *Federal*) a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

*Cost sharing or matching* means the value of the third party in-kind contributions and the portion of the costs

of a federally assisted project or program not borne by the Federal Government.

*Cost-type contract* means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

*Equipment* means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

*Expenditure report* means: (1) For nonconstruction grants, the SF–269 *Financial Status Report* (or other equivalent report); (2) for construction grants, the SF–271 *Outlay Report and Request for Reimbursement* (or other equivalent report).

*Federally recognized Indian tribal government* means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

*Government* means a State or local government or a federally recognized Indian tribal government.

*Grant* means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

*Grantee* means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

*Local government* means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

*Obligations* means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

*OMB* means the United States Office of Management and Budget.

*Outlays* (expenditures) mean 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 actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of inkind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

*Percentage of completion method* refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

*Prior approval* means documentation evidencing consent prior to incurring specific cost.

*Real property* means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

*Share,* when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

*State* means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

*Subgrant* means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of *grant* in this part.

*Subgrantee* means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

*Supplies* means all tangible personal property other than *equipment* as defined in this part.

*Suspension* means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

*Termination* means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. *Termination* does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

*Terms of a grant or subgrant* mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

*Third party in-kind contributions* mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

*Unliquidated obligations* for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

*Unobligated balance* means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

### § 3016.4 Applicability.

(a) *General.* Subparts A–D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 3016.6, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and Titles I–III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV–A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV–D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV–E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI–AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241–1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in §3016.4(a) (3)–(8) are subject to Subpart E.

### §3016.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in §3016.6.

### §3016.6 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

## Subpart B—Pre-Award Requirements

### § 3016.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF–424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

### § 3016.11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive Order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect:

(1) New or revised Federal statutes or regulations or

(2) A material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

### § 3016.12 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered ''high risk'' if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions; and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

## Subpart C—Post-Award Requirements

FINANCIAL ADMINISTRATION

### § 3016.20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled

checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

**§ 3016.21 Payment.**

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 3016.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

### § 3016.22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

| For the costs of a— | Use the principles in— |
|---|---|
| State, local or Indian tribal government. | OMB Circular A–87. |
| Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A–122 as not subject to that circular. | OMB Circular A–122. |
| Educational institutions. ..... | OMB Circular A–21. |
| For-profit organization other than a hospital and an organization named in OMB Circular A–122 as not subject to that circular. | 48 CFR part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency. |

### § 3016.23 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF–269). The Federal agency may extend this deadline at the request of the grantee.

### § 3016.24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in § 3016.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 3016.25(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 3016.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the

grantee. This requirement will also be imposed by the grantee on subgrantees.

**§ 3016.25 Program income.**

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. ''During the grant period'' is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 3016.34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 3016.31 and 3016.32.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

**§ 3016.26 Non-Federal audit.**

(a) *Basic Rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501–7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with

generally accepted government auditing standards covering financial and compliance audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A–110, ''Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations'' have met the audit requirement. Commercial contractors (private for profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A–110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, § 3016.36 shall be followed.

CHANGES, PROPERTY, AND SUBAWARDS

**§ 3016.30 Changes.**

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 3016.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes.* (1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 3016.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget formal the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 3016.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

**§ 3016.31 Real property.**

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the

awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

**§ 3016.32 Equipment.**

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 3016.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow § 3016.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

**§ 3016.33 Supplies.**

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

**§ 3016.34 Copyrights.**

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

**§ 3016.35 Subawards to debarred and suspended parties.**

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, ''Debarment and Suspension.''

**§ 3016.36 Procurement.**

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of

conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition*. (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 3016.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a ''brand name'' product instead of allowing ''an equal'' product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ''brand name or equal'' description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed.* (1) Procurement by *small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at

$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 3016.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a

delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 3016.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or

service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a ''brand name'' product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency'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 will, 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 law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other

clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled ''Equal Employment Opportunity,'' as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a–7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of $2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2000, and in excess of $2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871).

[53 FR 8044, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19641, Apr. 19, 1995]

### § 3016.37 Subgrants.

(a) *States.* States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 3016.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and

amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 3016.10;

(2) Section 3016.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in §3016.21; and

(4) Section 3016.50.

REPORTS, RECORDS, RETENTION, AND ENFORCEMENT

**§3016.40 Monitoring and reporting program performance.**

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

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

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such

cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

**§ 3016.41 Financial reporting.**

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with paragraph § 3016.41(e)(2)(iii) of this section.

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accural basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will

be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report*—(1) *Form.* (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the ''Remarks'' section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement*—(1) *Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 3016.41(b)(3).

(e) *Outlay report and request for reimbursement for construction programs.* (1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 3016.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 3016.41(b)(3).

(2) Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 3016.41(b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 3016.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 3016.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 3016.41(b)(2).

**§ 3016.42 Retention and access requirements for records.**

(a) *Applicability*. (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 3016.36(i)(10).

(b) *Length of retention period*. (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period*—(1) *General*. When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records*. The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support*. In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies 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).

(i) *If submitted for negotiation*. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation*. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm*. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records*—(1) *Records of grantees and subgrantees*. The awarding agency and the Comptroller General of

the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

**§3016.43 Enforcement.**

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may 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 grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and 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 for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

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

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

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

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

(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 grantee or subgrantee from being subject to ''Debarment and Suspension'' under E.O. 12549 (see §3016.35).

**§3016.44 Termination for convenience.**

Except as provided in §3016.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee 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, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either §3016.43 or paragraph (a) of this section.

## Subpart D—After-The-Grant Requirements

### § 3016.50 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) Final performance or progress report.

(2) Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF–271) (as applicable.)

(3) Final request for payment (SF–270) (if applicable).

(4) Invention disclosure (if applicable).

(5) Federally-owned property report: In accordance with § 3016.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

### § 3016.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 3016.42;

(d) Property management requirements in §§ 3016.31 and 3016.32; and

(e) Audit requirements in § 3016.26.

### § 3016.52 Collection of amounts due.

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

(1) Making an adminstrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

## Subpart E—Entitlement [Reserved]

# PART 3017—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG–FREE WORKPLACE (GRANTS)

### Subpart A—General

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AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 701 *et seq.*; E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

SOURCE: 54 FR 4731, Jan. 30, 1989, unless otherwise noted.

CROSS REFERENCE: See also Office of Management and Budget notices published at 55 FR 21679, May 25, 1990, and 60 FR 33036, June 26, 1995.

## Subpart A—General

### §3017.100 Purpose.

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of E.O. 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the E.O. by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of ''ineligible'' in §3017.105), and participants who have voluntarily excluded themselves from participation in covered transactions;

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) These regulations also implement Executive Order 12689 (3 CFR, 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Public Law 103–355, sec. 2455, 108 Stat. 3327) by—

(1) Providing for the inclusion in the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* all persons proposed for debarment,

debarred or suspended under the Federal Acquisition Regulation, 48 CFR Part 9, subpart 9.4; persons against which governmentwide exclusions have been entered under this part; and persons determined to be ineligible; and

(2) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion.

(d) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

[60 FR 33040, 33043, June 26, 1995]

**§ 3017.105 Definitions.**

The following definitions apply to this part:

*Adequate evidence.* Information sufficient to support the reasonable belief that a particular act or omission has occurred.

*Affiliate.* Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, *or*, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

*Agency.* Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

(1) A USDA agency, when used in the context of USDA internal procedures or requirements, is any organizational unit of the U.S. Department of Agriculture with authority delegated in 7 CFR part 2 to carry out primary covered transactions under USDA programs.

(2) [Reserved]

*Appeals officer.* Any administrative law judge of the Office of Administrative Law Judges, Department of Agriculture.

*Civil judgment.* The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–12).

*Conviction.* A judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

*Debarment.* An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is ''debarred.''

*Debarring official.* An official authorized to impose debarment. The debarring official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(i) In USDA, the authority to act as a debarring official is not delegated below the agency head level.

(ii) [Reserved]

(3) In USDA, each Under Secretary, Assistant Secretary, or agency head who has been delegated authority in part 2 of this title to carry out a covered transaction is authorized to act as a debarring official in connection with such covered transaction.

*Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

*Ineligible.* Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

*Legal proceedings.* Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

*List of Parties Excluded from Federal Procurement and Nonprocurement Programs.* A list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Orders 12549 and 12689 and these regulations or 48 CFR part 9, subpart 9.4, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, and those persons who have been determined to be ineligible.

*Notice.* A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

*Participant.* Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

*Person.* Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

*Preponderance of the evidence.* Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

*Principal.* Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators.

(2) [Reserved]

*Proposal.* A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

*Respondent.* A person against whom a debarment or suspension action has been initiated.

*State.* Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

*Suspending official.* An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(i) In USDA, the authority to act as a suspending official is not delegated below the agency head level.

(ii) [Reserved]

(3) In USDA, each Under Secretary, Assistant Secretary, or agency head who has been delegated authority in part 2 of this title to carry out a covered transaction is authorized to act as a suspending official in connection with such covered transaction.

*Suspension.* An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary

period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is ''suspended.''

*USDA.* U.S. Department of Agriculture.

*Voluntary exclusion or voluntarily excluded.* A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

[54 FR 4731, Jan. 30, 1989, as amended at 60 FR 33040, 33043, June 26, 1995]

**§ 3017.110 Coverage.**

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as ''covered transactions.''

(1) *Covered transaction.* For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: Grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(*1*) Principal investigators.

(*2*) Providers of federally-required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(3) *Department of Agriculture covered transactions.* (i) With respect to paragraph (a)(1) of this section, for USDA's export and foreign assistance programs, covered transactions will include only primary covered transactions. Any lower tier transactions with respect to UDSA's export and foreign assistance programs will not be considered lower tier covered transactions for the purposes of this part.

The export or substitution of Federal timber governed by the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. 620 *et seq.* (the ''Export Act''), is specifically excluded from the coverage of this rule. The Export Act provides separate statutory authority to debar persons engaged in both primary covered transactions and lower tier transactions.

(ii) With respect to paragraph (a)(1)(ii)(B) of this section, for USDA's domestic food assistance programs, only the initial such procurement contract and the first tier subcontract under that procurement contract shall be considered lower tier covered transactions.

(iii) With respect to paragraph (a)(2) of this section, the following USDA transactions also are not covered: transactions under programs which provide statutory entitlements and make available loans to individuals and entities in their capacity as producers of agricultural commodities; transactions under conservation programs; transactions under warehouse licensing programs; the receipt of licenses, permits, certificates, and indemnification under regulatory programs conducted in the interest of public health and safety and animal and plant health and safety; the receipt of official grading and inspection services, animal damage control services, public health and safety inspection services, and animal and plant health and safety inspection services; if the person is a State or local government, the provision of official grading and inspection services, animal damage control services, public health and safety inspection services, animal and plant health and safety inspection services; and permits, licenses, exchanges and other acquisitions of real property, rights of way, and easements under natural resource management programs.

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, ''Effect of Action,'' §3017.200, ''Debarment or suspension,'' sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in §3017.110(a). Sections 3017.325, ''Scope of debarment,'' and 3017.420, ''Scope of suspension,'' govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* In accordance with E.O. 12689 and section 2455 of Public Law 103–355, any debarment, suspension, proposed debarment or other governmentwide exclusion initiated under the Federal Acquisition Regulation (FAR) on or after August 25, 1995 shall be recognized by and effective for Executive Branch agencies and participants as an exclusion under this regulation. Similarly, any debarment, suspension or other governmentwide exclusion initiated under this regulation on or after August 25, 1995 shall be recognized by and effective for those agencies as a debarment or suspension under the FAR.

[54 FR 4731, Jan. 30, 1989, as amended at 60 FR 33041, 33043, June 26, 1995; 61 FR 250, Jan. 4, 1996]

### §3017.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged

to establish methods and procedures for coordinating their debarment or suspension actions.

(d) In any case in which an administrative exclusion is considered under an authority other than this part, USDA will initiate, where appropriate, a debarment or suspension action under this part for the protection of the entire Federal Government.

[54 FR 4731, Jan. 30, 1989, as amended at 61 FR 251, Jan. 4, 1996]

## Subpart B—Effect of Action

### § 3017.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the Executive Branch of the Federal Government for the period of their debarment, suspension, or the period they are proposed for debarment under 48 CFR part 9, subpart 9.4. Accordingly, no agency shall enter into primary covered transactions with such excluded persons during such period, except as permitted pursuant to § 3017.215.

(b) *Lower tier covered transactions.* Except to the extent prohibited by law, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § 3017.110(a)(1)(ii)) for the period of their exclusion.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for—

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

(d) *Department of Agriculture excepted transactions.* With respect to paragraph (c) of this section, the following USDA transactions also are excepted: transactions under programs which provide statutory entitlements and make available loans to individuals and entities in their capacity as producers of agricultural commodities; transations under conservation programs; transactions under warehouse licensing programs; the receipt of licenses, permits, certificates, and indemnification under regulatory programs conducted in the interest of public health and safety and animal and plant health and safety; the receipt of official grading and inspection services, animal damage control services, public health and safety inspection services, and animal and plant health and safety inspection services; if the person is a State or local government, the provision of official grading and inspection services, animal damage control services, public health and safety inspection services, and animal and plant health and safety inspection services; and permits, licenses, exchanges, and other acquisitions of real property, rights of way, and easements under natural resource management programs.

[60 FR 33041, 33043, June 26, 1995, as amended at 61 FR 251, Jan. 4, 1996]

### § 3017.205 Ineligible persons.

Persons who are ineligible, as defined in § 3017.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

### § 3017.210 Voluntary exclusion.

Persons who accept voluntary exclusions under § 3017.315 are excluded in

accordance with the terms of their settlements. USDA shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

### §3017.215 Exception provision.

USDA may grant an exception permitting a debarred, suspended, or voluntarily excluded person, or a person proposed for debarment under 48 CFR part 9, subpart 9.4, to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and §3017.200. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with §3017.505(a).

[60 FR 33041, 33043, June 26, 1995]

### §3017.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, proposed debarment under 48 CFR part 9, subpart 9.4, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible or voluntary excluded, except as provided in §3017.215.

[60 FR 33041, 33043, June 26, 1995]

### §3017.225 Failure to adhere to restrictions.

(a) Except as permitted under §3017.215 or §3017.220, a participant shall not knowingly do business under a covered transaction with a person who is—

(1) Debarred or suspended;

(2) Proposed for debarment under 48 CFR part 9, subpart 9.4; or

(3) Ineligible for or voluntarily excluded from the covered transaction.

(b) Violation of the restriction under paragraph (a) of this section may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

(c) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible, or voluntarily excluded from the covered transaction (See appendix B of these regulations), unless it knows that the certification is erroneous. An agency has the burden of proof that a participant did knowingly do business with a person that filed an erroneous certification.

[60 FR 33041, 33043, June 26, 1995]

## Subpart C—Debarment

### §3017.300 General.

The debarring official may debar a person for any of the causes in §3017.305, using procedures established in §§3017.310 through §3017.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

### §3017.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§3017.300 through §3017.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before March 1, 1989, the effective date of these regulations or a procurement debarment by any Federal agency taken pursuant to 48 CFR Subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § 3017.215 or § 3017.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 3017.315 or of any settlement of a debarment or suspension action; or

(5) Violation of any requirement of Subpart F of this part, relating to providing a drug-free workplace, as set forth in § 3017.615 of this part.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

[54 FR 4731, Jan. 30, 1989, as amended at 54 FR 4952, Jan. 31, 1989]

### § 3017.310 Procedures.

USDA shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ 3017.311 through 3017.314.

### § 3017.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

(a) The decision to utilize agency personnel, the Office of Inspector General (OIG), or other appropriate resources to conduct the investigation and develop the documentation required by paragraph (b) of this section is the responsibility of the agency possessing the information.

(b) Basic documentation shall be developed that includes but is not limited to:

(1) The name of the specific respondent(s) against whom the action is being proposed or taken;

(2) The reason(s) for proposing the debarment;

(3) The specific cause(s) for debarment from § 3017.305;

(4) A short narrative stating the facts and/or describing other evidence supporting the reason(s) for the need to debar;

(5) The recommended time period for the debarment;

(6) The potential effect and/or consequences that the debarment will have on the respondent(s);

(7) Copies of any relevant support documentation identified under this section.

(c) The debarring official shall be responsible for deciding whether or not to proceed with the action.

(d) The Office of the General Counsel (OGC) is responsible for:

(1) Reviewing the documentation and notices for legal sufficiency, and

(2) Providing any necessary coordination with the Department of Justice (DOJ).

[54 FR 4722 and 4731, Jan. 30, 1989, as amended at 54 FR 4732, Jan. 30, 1989]

### §3017.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(1) Information on the specific debarment action proposed must be given.

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under §3017.305 for proposing debarment;

(d) Of the provisions of §§3017.311 through 3017.314, and any other USDA procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

In USDA, the notice to the respondent shall be signed by the debarring official and transmitted by certified mail, return receipt requested. OGC will be consulted on all proposed debarment actions prior to the notice being sent to the respondent.

[54 FR 4722 and 4731, Jan. 30, 1989, as amended at 54 FR 4732, Jan. 30, 1989]

### §3017.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

### §3017.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(1) In USDA debarment actions where respondent(s) fail(s) to timely provide any submission in opposition, the action will be considered decided.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c) (1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in § 3017.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

(3) In USDA, the notice to the respondent shall be in writing, signed by the debarring official, and transmitted by certified mail, return receipt requested. The OGC will be consulted on all debarment actions prior to the notice being sent to the respondent.

[54 FR 4722 and 4731, Jan. 30, 1989, as amended at 54 FR 4732, Jan. 30, 1989]

### § 3017.315 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, USDA may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see Subpart E).

### § 3017.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of Subpart F of this part generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of Subpart F of this part (*see* 3017.305(c)(5)), the period of debarment shall not exceed five years.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest.

However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§ 3017.311 through 3017.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination or other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

[54 FR 4731, Jan. 30, 1989, as amended at 54 FR 4952, Jan. 31, 1989]

### § 3017.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given

notice of the proposed debarment and an opportunity to respond (see §§3017.311 through 3017.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

## Subpart D—Suspension

### §3017.400 General.

(a) The suspending official may suspend a person from any of the causes in §3017.405 using procedures established in §§3017.410 through 3017.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in §3017.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

### §3017.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§3017.400 through 3017.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in §3017.305(a); or

(2) That a cause for debarment under §3017.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

### §3017.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(1) The decision to utilize agency personnel, OIG or other appropriate resources to conduct the investigation and develop the documentation required by paragraph (a)(2) of this section is the responsibility of the agency possessing the information.

(2) Basic documentation shall be developed that includes but is not limited to:

(i) The name of the specific respondent(s) against whom the suspension is to be taken;

(ii) The reason(s) for proposing the suspension;

(iii) The specific cause(s) for suspension from §3017.405;

(iv) A short narrative stating the facts and/or describing other evidence supporting the reason(s) for the suspension;

(v) The recommended time period for the suspension;

(vi) The potential effect and/or consequences that the suspension will have on the respondent(s);

(vii) Copies of any relevant support documentation identified under this section.

(3) The suspending official shall be responsible for deciding whether or not to proceed with the suspension.

(4) OGC is responsible for:

(i) Reviewing the documentation and notice for legal sufficiency, and

(ii) Providing any necessary coordination with DOJ.

(b) *Decisionmaking process.* USDA shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in § 3017.411 through § 3017.413.

[54 FR 4722 and 4731, Jan. 30, 1989, as amended at 54 FR 4732, Jan. 30, 1989]

### § 3017.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § 3017.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of § 3017.411 through § 3017.413 and any other USDA procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

In USDA, the notice to the respondent shall be signed by the suspending official and transmitted by certified mail, return receipt requested. OGC will be consulted on all proposed suspension actions prior to the notice being sent to the respondent.

[54 FR 4722 and 4731, Jan. 30, 1989, as amended at 54 FR 4732, Jan. 30, 1989]

### § 3017.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(A) In USDA, such determination shall be made by the suspending official, after coordination with OGC.

(B) In USDA, the suspending official shall continue the suspension only if he/she determines, after consultation with OGC, that there is enough evidence to proceed without using the facts that DOJ has advised would prejudice the contemplated legal proceedings. If there is not such evidence, the suspension shall be terminated immediately without prejudice.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

[54 FR 4722 and 4731, Jan. 30, 1989, as amended at 54 FR 4732, Jan. 30, 1989]

**§3017.413 Suspending official's decision.**

The suspending official may modify or terminate the suspension (for example, see §3017.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(1) In USDA, the suspending official shall terminate the suspension immediately when additional proceedings to determine disputed facts have been denied on the basis of DOJ advice. The agency, however, reserves the right to proceed with the suspension when DOJ completes its legal proceedings or is satisfied that the suspension no longer will prejudice DOJ's proceedings.

(2) In USDA suspension actions, where the respondent(s) fail(s) to timely provide any submission in opposition, the action will be considered decided.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specificially determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

(1) In USDA, the notice to the respondent shall be signed by the suspending official and transmitted by certified mail, return receipt requested. OGC will be consulted on all proposed suspension actions prior to the notice being sent to the respondent. The notice shall include the following:

(i) Reference to the previously issued notice of suspension;

(ii) The reason(s) for the action taken in this notice.

(iii) The effective date(s) of the suspension taken in this notice and, where appropriate, the period of the suspension;

(iv) Advice that the suspension is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or a designee authorized by an agency head makes a determination referred to in §3017.215.

[54 FR 4722 and 4731, Jan. 30, 1989, as amended at 54 FR 4732, Jan. 30, 1989]

**§3017.415 Period of suspension.**

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuring legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an

impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

(1) The suspending official shall notify OGC which will notify DOJ of the impending termination of a suspension.

[54 FR 4722 and 4731, Jan. 30, 1989, as amended at 54 FR 4733, Jan. 30, 1989]

### § 3017.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see § 3017.325), except that the procedures of §§ 3017.410 through 3017.413 shall be used in imposing a suspension.

## Subpart E—Responsibilities of GSA, Agency and Participants

### § 3017.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

### § 3017.505 USDA responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspensions, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which USDA has granted exceptions under § 3017.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in § 3017.500(b) and of the exceptions granted under § 3017.215 within five working days after taking such actions.

(1) Each communication with GSA regarding additions, deletions, or changes to the Nonprocurement List shall be in writing.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

(f) USDA agencies shall provide the Office of Finance and Management (OFM) with a copy of any information provided to GSA pursuant to this section.

(g) USDA agencies shall notify GSA and OFM, in writing, of debarment or suspension decisions overturned on appeal under § 3017.515.

[54 FR 4722 and 4731, Jan. 30, 1989, as amended at 54 FR 4733, Jan. 30, 1989]

### § 3017.510 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in Appendix A to this Part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is

not required to, check the Nonprocurement List for its principals (Tel. #). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B to this part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel. #).

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to USDA if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposal.

### §3017.515 Appeal of debarment or suspension decisions.

(a) If a decision to debar or suspend is made by a debarring or suspending official under §3017.314 or §3017.413, the respondent may appeal the decision to the Office of Administrative Law Judges (OALJ) by filing the appeal, in writing, to the Hearing Clerk, OALJ, United States Department of Agriculture, Washington, DC 20250. The appeal must be filed within 30 days of receiving the decision and it must specify the basis of the appeal. The decision of a debarring or suspending official under §3017.314 or §3017.413 may be vacated by the assigned appeals officer if the officer determines that the decision is:

(1) Not in accordance with law;

(2) Not based on the applicable standard of evidence; or

(3) Arbitrary and capricious and an abuse of discretion.

(b) The appeals officer will base his/her decision solely upon the administrative record.

(c) Within 90 days of the date the appeal is filed with USDA's OALJ Hearing Clerk, the appeals officer will notify, in writing, the respondent(s) and the debarring or suspending official, who took the action being appealed, of his/her decision in the appeal. The notice must specify the reason(s) for the decision made by the appeals officer.

(d) The appeals officer's decision is final and is not appealable within USDA.

[54 FR 4733, Jan. 30, 1989]

## Subpart F—Drug-Free Workplace Requirements (Grants)

SOURCE: 55 FR 21688, 21691, May 25, 1990, unless otherwise noted.

### §3017.600 Purpose.

(a) The purpose of this subpart is to carry out the Drug-Free Workplace Act of 1988 by requiring that—

(1) A grantee, other than an individual, shall certify to the agency that it will provide a drug-free workplace;

(2) A grantee who is an individual shall certify to the agency that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with the agency are found at 48 CFR subparts 9.4, 23.5, and 52.2.

### §3017.605 Definitions.

(a) Except as amended in this section, the definitions of §3017.105 apply to this subpart.

(b) For purposes of this subpart—

(1) *Controlled substance* means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15;

(2) *Conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(3) *Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

(4) *Drug-free workplace* means a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance;

(5) *Employee* means the employee of a grantee directly engaged in the performance of work under the grant, including:

(i) All *direct charge* employees;

(ii) All *indirect charge* employees, unless their impact or involvement is insignificant to the performance of the grant; and,

(iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll.

This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces);

(6) *Federal agency* or *agency* means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) *Grant* means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management government-wide common rule on uniform administrative requirements for grants and cooperative agreements. The term does not include technical assistance that provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) *Grantee* means a person who applies for or receives a grant directly from a Federal agency (except another Federal agency);

(9) *Individual* means a natural person;

(10) *State* means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers the instrumentality to be an agency of the State government.

**§ 3017.610 Coverage.**

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government. A determination of such inconsistency may be made only by the agency head or his/her designee.

(c) The provisions of subparts A, B, C, D and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions

of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

### §3017.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that—

(a) The grantee has made a false certification under §3017.630;

(b) With respect to a grantee other than an individual—

(1) The grantee has violated the certification by failing to carry out the requirements of paragraphs (A)(a)–(g) and/or (B) of the certification (Alternate I to Appendix C) or

(2) Such a number of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace.

(c) With respect to a grantee who is an individual—

(1) The grantee has violated the certification by failing to carry out its requirements (Alternate II to Appendix C); or

(2) The grantee is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity.

### §3017.620 Effect of violation.

(a) In the event of a violation of this subpart as provided in §3017.615, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (*see* §3017.320(a)(2) of this part).

### §3017.625 Exception provision.

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

### §3017.630 Certification requirements and procedures.

(a)(1) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the Federal agency providing the grant, as provided in Appendix C to this part.

(2) Grantees are not required to make a certification in order to continue receiving funds under a grant awarded before March 18, 1989, or under a no-cost time extension of such a grant. However, the grantee shall make a one-time drug-free workplace certification for a non-automatic continuation of such a grant made on or after March 18, 1989.

(b) Except as provided in this section, all grantees shall make the required certification for each grant. For mandatory formula grants and entitlements that have no application process, grantees shall submit a one-time certification in order to continue receiving awards.

(c) A grantee that is a State may elect to make one certification in each Federal fiscal year. States that previously submitted an annual certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. Except as provided in paragraph (d) of this section, this certification shall cover all grants to all State agencies from any Federal agency. The State shall retain the original of this statewide certification in its Governor's office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency

has designated a central location for submission.

(d)(1) The Governor of a State may exclude certain State agencies from the statewide certification and authorize these agencies to submit their own certifications to Federal agencies. The statewide certification shall name any State agencies so excluded.

(2) A State agency to which the statewide certification does not apply, or a State agency in a State that does not have a statewide certification, may elect to make one certification in each Federal fiscal year. State agencies that previously submitted a State agency certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. The State agency shall retain the original of this State agency-wide certification in its central office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency designates a central location for submission.

(3) When the work of a grant is done by more than one State agency, the certification of the State agency directly receiving the grant shall be deemed to certify compliance for all workplaces, including those located in other State agencies.

(e)(1) For a grant of less than 30 days performance duration, grantees shall have this policy statement and program in place as soon as possible, but in any case by a date prior to the date on which performance is expected to be completed.

(2) For a grant of 30 days or more performance duration, grantees shall have this policy statement and program in place within 30 days after award.

(3) Where extraordinary circumstances warrant for a specific grant, the grant officer may determine a different date on which the policy statement and program shall be in place.

### § 3017.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

(a) When a grantee other than an individual is notified that an employee has been convicted for a violation of a criminal drug statute occurring in the workplace, it shall take the following actions:

(1) Within 10 calendar days of receiving notice of the conviction, the grantee shall provide written notice, including the convicted employee's position title, to every grant officer, or other designee on whose grant activity the convicted employee was working, unless a Federal agency has designated a central point for the receipt of such notifications. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(2) Within 30 calendar days of receiving notice of the conviction, the grantee shall do the following with respect to the employee who was convicted.

(i) Take appropriate personnel action against the employee, up to and including termination, consistent with requirements of the Rehabilitation Act of 1973, as amended; or

(ii) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(b) A grantee who is an individual who is convicted for a violation of a criminal drug statute occurring during the conduct of any grant activity shall report the conviction, in writing, within 10 calendar days, to his or her Federal agency grant officer, or other designee, unless the Federal agency has designated a central point for the receipt of such notices. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(Approved by the Office of Management and Budget under control number 0991–0002)

## APPENDIX A TO PART 3017—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

### Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of

why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded,* as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

*Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions*

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

[60 FR 33042, 33043, June 26, 1995]

## APPENDIX B TO PART 3017—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

### Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal,* and *voluntarily excluded,* as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

### *Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion—Lower Tier Covered Transactions*

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

[60 FR 33042, 33043, June 26, 1995]

## APPENDIX C TO PART 3017—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

### *Instructions for Certification*

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

*Controlled substance* means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

*Conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

*Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

*Employee* means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All *direct charge* employees; (ii) All *indirect charge* employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

*Certification Regarding Drug-Free Workplace Requirements*

*Alternate I.* (Grantees Other Than Individuals)

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee

on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

*Alternate II.* (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21691, May 25, 1990]

# PART 3018—NEW RESTRICTIONS ON LOBBYING

### Subpart A—General

Sec.
3018.100 Conditions on use of funds.
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### Subpart D—Penalties and Enforcement

3018.400 Penalties.
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### Subpart E—Exemptions

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3018.600 Semi-annual compilation.
3018.605 Inspector General report.
APPENDIX A TO PART 3018—CERTIFICATION REGARDING LOBBYING
APPENDIX B TO PART 3018—DISCLOSURE FORM TO REPORT LOBBYING

AUTHORITY: Sec. 319, Pub. L. 101–121 (31 U.S.C. 1352); 5 U.S.C. 301.

SOURCE: 55 FR 6737 and 6746, Feb. 26, 1990.

CROSS REFERENCE: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

## Subpart A—General

### § 3018.100 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative ageement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a

certification, set forth in Appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in Appendix B, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in Appendix A, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form, set forth in Appendix B, if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

**§3018.105 Definitions.**

For purposes of this part:

(a) *Agency,* as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

(b) *Covered Federal action* means any of the following Federal actions:

(1) The awarding of any Federal contract;

(2) The making of any Federal grant;

(3) The making of any Federal loan;

(4) The entering into of any cooperative agreement; and,

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. Loan guarantees and loan insurance are addressed independently within this part.

(c) *Federal contract* means an acquisition contract awarded by an agency, including those subject to the Federal Acquisition Regulation (FAR), and any other acquisition contract for real or personal property or services not subject to the FAR.

(d) *Federal cooperative agreement* means a cooperative agreement entered into by an agency.

(e) *Federal grant* means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government or a direct appropriation made by law to any person. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, loan insurance, interest subsidies, insurance, or direct United States cash assistance to an individual.

(f) *Federal loan* means a loan made by an agency. The term does not include loan guarantee or loan insurance.

(g) *Indian tribe* and *tribal organization* have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

(h) *Influencing or attempting to influence* means making, with the intent to influence, any communication to or appearance before an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(i) *Loan guarantee* and *loan insurance* means an agency's guarantee or insurance of a loan made by a person.

(j) *Local government* means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(k) *Officer or employee of an agency* includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;

(2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;

(3) A special Government employee as defined in section 202, title 18, U.S. Code; and,

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

(l) *Person* means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(m) *Reasonable compensation* means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(n) *Reasonable payment* means, with respect to perfessional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(o) *Recipient* includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(p) *Regularly employed* means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or a commitment providing for the United States to insure or guarantee a loan, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guarantee commitment. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(q) *State* means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

### § 3018.110 Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(1) A Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000,

Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

(1) A subcontract exceeding $100,000 at any tier under a Federal contract;

(2) A subgrant, contract, or subcontract exceeding $100,000 at any tier under a Federal grant;

(3) A contract or subcontract exceeding $100,000 at any tier under a Federal loan exceeding $150,000; or,

(4) A contract or subcontract exceeding $100,000 at any tier under a Federal cooperative agreement,

Shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either Subpart B or C.

## Subpart B—Activities by Own Employees

### §3018.200 Agency and legislative liaison.

(a) The prohibition on the use of appropriated funds, in §3018.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph (a) of this section, the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph (a) of this section, the following agencies and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95–507 and other subsequent amendments.

(e) Only those activities expressly authorized by this section are allowable under this section.

**§ 3018.205 Professional and technical services.**

(a) The prohibition on the use of appropriated funds, in § 3018.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or an extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) For purposes of paragraph (a) of this section, ''professional and technical services'' shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by this section are allowable under this section.

**§3018.210 Reporting.**

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

## Subpart C—Activities by Other Than Own Employees

**§3018.300 Professional and technical services.**

(a) The prohibition on the use of appropriated funds, in §3018.100 (a), does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) The reporting requirements in §3018.110 (a) and (b) regarding filing a disclosure form by each person, if required, shall not apply with respect to professional or technical services rendered directly in the preparation, submission, or negotiation of any commitment providing for the United States to insure or guarantee a loan.

(c) For purposes of paragraph (a) of this section, ''professional and technical services'' shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting or a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(d) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(e) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(f) Only those services expressly authorized by this section are allowable under this section.

## Subpart D—Penalties and Enforcement

**§3018.400 Penalties.**

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see Appendix B) to be filed or amended if required herein, shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(c) A filing or amended filing on or after the date on which an administrative action for the imposition of a civil penalty is commenced does not prevent

the imposition of such civil penalty for a failure occurring before that date. An administrative action is commenced with respect to a failure when an investigating official determines in writing to commence an investigation of an allegation of such failure.

(d) In determining whether to impose a civil penalty, and the amount of any such penalty, by reason of a violation by any person, the agency shall consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of such person to continue in business, any prior violations by such person, the degree of culpability of such person, the ability of the person to pay the penalty, and such other matters as may be appropriate.

(e) First offenders under paragraphs (a) or (b) of this section shall be subject to a civil penalty of $10,000, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between $10,000 and $100,000, as determined by the agency head or his or her designee.

(f) An imposition of a civil penalty under this section does not prevent the United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of such civil penalty.

### § 3018.405 Penalty procedures.

Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. sections 3803 (except subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812, insofar as these provisions are not inconsistent with the requirements herein.

### § 3018.410 Enforcement.

The head of each agency shall take such actions as are necessary to ensure that the provisions herein are vigorously implemented and enforced in that agency.

## Subpart E—Exemptions

### § 3018.500 Secretary of Defense.

(a) The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) The Department of Defense may issue supplemental regulations to implement paragraph (a) of this section.

## Subpart F—Agency Reports

### § 3018.600 Semi-annual compilation.

(a) The head of each agency shall collect and compile the disclosure reports (see Appendix B) and, on May 31 and November 30 of each year, submit to the Secretary of the Senate and the Clerk of the House of Representatives a report containing a compilation of the information contained in the disclosure reports received during the six-month period ending on March 31 or September 30, respectively, of that year.

(b) The report, including the compilation, shall be available for public inspection 30 days after receipt of the report by the Secretary and the Clerk.

(c) Information that involves intelligence matters shall be reported only to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(d) Information that is classified under Executive Order 12356 or any successor order shall be reported only to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives or the Committees on Armed Services of the Senate and the House of Representatives (whichever such committees have jurisdiction of matters involving such information) and to the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(e) The first semi-annual compilation shall be submitted on May 31, 1990, and shall contain a compilation of the disclosure reports received from December 23, 1989 to March 31, 1990.

(f) Major agencies, designated by the Office of Management and Budget (OMB), are required to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives no later than with the compilations due on May 31, 1991. OMB shall provide detailed specifications in a memorandum to these agencies.

(g) Non-major agencies are requested to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives.

(h) Agencies shall keep the originals of all disclosure reports in the official files of the agency.

### § 3018.605 Inspector General report.

(a) The Inspector General, or other official as specified in paragraph (b) of this section, of each agency shall prepare and submit to Congress each year, commencing with submission of the President's Budget in 1991, an evaluation of the compliance of that agency with, and the effectiveness of, the requirements herein. The evaluation may include any recommended changes that may be necessary to strengthen or improve the requirements.

(b) In the case of an agency that does not have an Inspector General, the agency official comparable to an Inspector General shall prepare and submit the annual report, or, if there is no such comparable official, the head of the agency shall prepare and submit the annual report.

(c) The annual report shall be submitted at the same time the agency submits its annual budget justifications to Congress.

(d) The annual report shall include the following: All alleged violations relating to the agency's covered Federal actions during the year covered by the report, the actions taken by the head of the agency in the year covered by the report with respect to those alleged violations and alleged violations in previous years, and the amounts of civil penalties imposed by the agency in the year covered by the report.

## APPENDIX A TO PART 3018—CERTIFICATION REGARDING LOBBYING

*Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

*Statement for Loan Guarantees and Loan Insurance*

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States

to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

APPENDIX B TO PART 3018—DISCLOSURE FORM TO REPORT LOBBYING

## DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

**1. Type of Federal Action:**
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

**2. Status of Federal Action:**
☐ a. bid/offer/application
b. initial award
c. post-award

**3. Report Type:**
☐ a. initial filing
b. material change
**For Material Change Only:**
year _____ quarter _____
date of last report _____

**4. Name and Address of Reporting Entity:**
☐ Prime ☐ Subawardee
Tier _____, *if known:*

**Congressional District,** *if known:*

**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:**

**Congressional District,** *if known:*

**6. Federal Department/Agency:**

**7. Federal Program Name/Description:**

CFDA Number, *if applicable:* _____

**8. Federal Action Number,** *if known:*

**9. Award Amount,** *if known:*
$

**10. a. Name and Address of Lobbying Entity**
*(if individual, last name, first name, MI):*

**b. Individuals Performing Services** *(including address if different from No. 10a)*
*(last name, first name, MI):*

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

**11. Amount of Payment** *(check all that apply):*
$ _____ ☐ actual ☐ planned

**12. Form of Payment** *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

**13. Type of Payment** *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

**14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:**

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

**15. Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No

**16.** Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

**Signature:** _____
**Print Name:** _____
**Title:** _____
**Telephone No.:** _____ **Date:** _____

**Federal Use Only:**

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Standard Form - LLL

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

## DISCLOSURE OF LOBBYING ACTIVITIES
### CONTINUATION SHEET

Approved by OMB
0348-0046

**Reporting Entity:** _____ **Page** _____ **of** _____

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**Standard Form - LLL-A**

# PART 3019—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

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AUTHORITY: 5 U.S.C. 301.

SOURCE: 60 FR 44124, Aug. 24, 1995, unless otherwise noted.

## Subpart A—General

### § 3019.1 Purpose.

This part establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. Federal awarding agencies shall not impose additional or inconsistent requirements, except as provided in §§ 3019.4, and 3019.14 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.

### § 3019.2 Definitions.

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

(1) Goods and other tangible property received;

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

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

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

(1) Earnings during a given period from:

(i) Services performed by the recipient, and

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

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

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

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

(e) *Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; contracts which are required to be entered into and administered under procurement laws and regulations; and those agreements that are entered into under the authorities provided by sections 1472(b), 1473A, and 1473C of the National Research Extension, and Teaching Policy Act of 1977 (as amended by the Food Security Act (7 U.S.C. 3318, 3319a and 3319c.) and subsequent authorizations. The term also does not include entitlement grants and subgrants under the National School Lunch Act:

(1) School Lunch (section 4 of the Act),

(2) Commodity Assistance (section 6 of the Act),

(3) Special Meal Assistance (section 11 of the Act),

(4) Summer Food Service for Children (section 13 of the Act), and,

(5) Child and Adult Care Food Program (section 17 of the Act), and entitlements grants and subgrants under the following programs of the Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and,

(ii) School Breakfast (section 4 of the Act).

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

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

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

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

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

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

(l) *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.

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

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

(o) *Federal awarding agency* means the U.S. Department of Agriculture (USDA) or any subagency of the U.S. Department of Agriculture that provides an award to the recipient.

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

(q) *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.

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

(s) *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.

(t) *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.

(u) *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.

(v) *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.

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

(x) *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 §§ 3019.24 (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 Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(y) *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.

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

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

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

(cc) *Recipient* means an organization receiving financial assistance directly from Federal awarding agencies 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 may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal awarding agency. 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.

(dd) *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.

(ee) *Small awards* means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently $25,000).

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

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

(hh) *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.''

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

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

(kk) *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.

(ll) *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.

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

(nn) *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.

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

### § 3019.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other non-regulatory 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 § 3019.4.

### § 3019.4 Deviations.

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

### § 3019.5 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 or other non-profit organizations. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government,'' codified at 7 CFR part 3016.

## Subpart B—Pre-Award Requirements

### § 3019.10 Purpose.

Sections 3019.11 through 3019.17 prescribe forms and instructions and other pre-award matters to be used in applying for Federal awards.

### § 3019.11 Pre-award policies.

(a) *Use of grants and cooperative agreements, and contracts.* In each instance, the Federal awarding agency shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for

choosing between grants and cooperative agreements is that for the latter, ''substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.'' Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public notice and priority setting.* Federal awarding agencies shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

**§3019.12 Forms for applying for Federal assistance.**

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

(b) Applicants shall use the SF–424 series or those forms and instructions prescribed by the Federal awarding agency.

(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 Federal awarding agency or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review. The U.S. Department of Agriculture procedures implementing E.O. 12372 are found at CFR part 3015.

(d) Federal awarding agencies that do not use the SF–424 form should indicate whether the application is subject to review by the State under E.O. 12372.

**§3019.13 Debarment and suspension.**

Federal awarding agencies and recipients shall comply with the nonprocurement debarment and suspension common rule implementing E.O.s 12549 and 12669, ''Debarment and Suspension,'' codified at 7 CFR 3017. 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.

**§3019.14 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,

Federal awarding agencies 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.

**§3019.15 Metric system of measurement.**

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially

impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. Federal awarding agencies shall follow the provisions of E.O. 12770, ''Metric Usage in Federal Government Programs.''

### § 3019.16 Resource Conservation and Recovery Act.

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

### § 3019.17 Certifications and representations.

Unless prohibited by statute or codified regulation, each Federal awarding agency 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

### § 3019.20 Purpose of financial and program management.

Sections 3019.21 through 3019.28 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.

### § 3019.21 Standards for financial management systems.

(a) Federal awarding agencies 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 § 3019.52. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

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

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

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

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State

agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, ''Withdrawal of Cash From the Treasury for Advances Under Federal Grant and Other Programs.''

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

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

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

(d) The Federal awarding agency 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 in paragraphs (c) and (d) of this section, 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.''

**§ 3019.22 Payment.**

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

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain: written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and financial management systems that meet the standards for fund control and accountability as established in § 3019.21. Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the Federal awarding agency 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 Federal awarding agency instructions for electronic funds transfer.

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

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

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

(f) If a recipient cannot meet the criteria for advance payments and the Federal awarding agency has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Federal awarding agency may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the Federal awarding agency 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 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, Federal awarding agencies shall not withhold payments for proper charges made by recipients at any time during the project period unless paragraphs (h)(1) and (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 Untied States as defined in OMB Circular A–129, ''Managing Federal Credit Programs.''

(3) Under such conditions, the Federal awarding agency 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, Federal awarding agencies 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. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. In keeping with the 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.

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 part, 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. Each Federal awarding agency shall adopt the SF–270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. Federal awarding agencies, however, have 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. Each Federal awarding agency shall adopt the SF–271 as the standard form to be used for requesting reimbursement for construction programs. However, a Federal awarding agency may substitute the SF–270 when the Federal awarding agency determines that it provides adequate information to meet Federal needs.

### § 3019.23 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 costs principles.

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

(6) Are provided for in the approved budget when required by the Federal awarding agency.

(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 the Federal awarding agency.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If a Federal awarding agency 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, the Federal awarding agency 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 the Federal awarding agency 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 of personal service, material, equipment, buildings and land shall be documented.

**§ 3019.24 Program income.**

(a) Federal awarding agencies 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 Federal awarding agency 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 the Federal awarding agency 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 an agency 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 the Federal awarding agency 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 the awarding agency indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in § 3019.14.

(e) Unless Federal awarding agency 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 Federal awarding agency 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 §§ 3019.30 through 3019.37).

(h) Unless Federal awarding agency 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.

### § 3019.25 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 Federal awarding agency 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 Federal awarding agencies for one or more of the following program or budget related reasons.

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

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

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

(4) The need for additional Federal funding.

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

(6) The inclusion, unless waived by the Federal awarding agency, 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, Federal awarding agencies are authorized, at their option, to waive cost-related and administrative prior written approvals required by this part and OMB Circulars A–21 and A–122. Such waivers may include authorizing recipients to do any one or more of the following.

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

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

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

(ii) The extension requires additional Federal funds.

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

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

(4) For awards that support research, unless the Federal awarding agency provides otherwise in the award or in the agency's regulations, the prior approval requirements described in this paragraph (e) 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) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. No Federal awarding agency shall 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 Federal awarding agencies 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 § 3019.27.

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

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

(k) For both construction and nonconstruction awards, Federal awarding agencies shall require recipients to notify the Federal awarding agency 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 the Federal awarding agency indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, Federal awarding agencies shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of

30 calendar days, the Federal awarding agency shall inform the recipient in writing of the date when the recipient may expect the decision.

### § 3019.26 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,'' codified at 7 CFR 3051.

(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 Federal awarding agency regulations implementing OMB Circular A–128, ''Audits of State and Local Governments.''

(c) Hospitals not covered by the audit provisions of OMB Circular A–133 shall be subject to the audit requirements of the Federal awarding agencies.

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

### § 3019.27 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.

### § 3019.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Federal awarding agency.

## PROPERTY STANDARDS

### § 3019.30 Purpose of property standards.

Sections 3019.31 through 3019.37 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. Federal awarding agencies 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 §§ 3019.31 through 3019.37.

### § 3019.31 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.

### § 3019.32 Real property.

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

(a) Title to real property shall vest in the recipient subject to the condition

that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the Federal awarding agency.

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

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

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

(2) The recipient may be directed to sell the property under guidelines provided by the Federal awarding agency 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.

### § 3019.33 Federally-owned and exempt property.

(a) Federally-owned property.

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

(2) If the Federal awarding agency has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the Federal awarding agency 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 the Federal awarding agency.

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

### § 3019.34 Equipment.

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

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than

private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

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

(1) Activities sponsored by the Federal awarding agency 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 the Federal awarding agency 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 the Federal awarding agency. User charges shall be treated as program income.

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

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

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

(i) A description of the equipment.

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

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

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

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

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

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

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal awarding agency 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 ensure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Federal awarding agency.

(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 the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Federal awarding agency. The Federal awarding agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported to the General Services Administration by the Federal awarding agency to determine whether a requirement for the equipment exists in other Federal agencies. The Federal awarding agency shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse the Federal awarding agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

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

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

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

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

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

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

### § 3019.35 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.

### § 3019.36 Intangible property.

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

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

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

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

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

(d) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 3019.34(g).

### § 3019.37 Property trust relationship.

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

## PROCUREMENT STANDARDS

### § 3019.40 Purpose of procurement standards.

Sections 3019.41 through 3019.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Federal awarding agencies upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

### § 3019.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Federal awarding agency, 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.

### § 3019.42 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.

### § 3019.43 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 interests as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

### § 3019.44 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 term and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, ''Debarment and Suspension.''

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

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in the Federal awarding agency's implementation of this part.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403(11) (currently $25,000) 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.

### § 3019.45 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.

### § 3019.46 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 bids or offers are not obtained, and

(c) Basis for award cost or price.

### § 3019.47 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.

**§ 3019.48 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 $100,00. For those contracts or subcontracts exceeding $100,000, the Federal awarding agency may accept the bonding policy and requirements of the recipient, provided the Federal awarding agency 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, the Federal awarding agency, 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 part, as applicable.

REPORTS AND RECORDS

**§ 3019.50 Purpose of reports and records.**

Sections 3019.51 through 3019.53 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.

**§ 3019.51 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 Section 3019.26.

(b) The Federal awarding agency shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in paragraph (f) 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 years awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

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

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

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

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

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

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

(f) Recipients shall immediately notify the Federal awarding agency 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) Federal awarding agencies may make site visits, as needed.

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

**§ 3019.52 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) Each Federal awarding agency shall require recipients to use the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs. A Federal awarding agency may, however, have the option of not requiring the SF–269 or SF–269A when the SF–270, Request for Advance or Reimbursement, or SF–272, Report of Federal Cash Transactions, is determined to provided adequate information to meet its needs, except that a final SF–269 or SF–269A shall be required at the completion of the project when the SF–270 is used only for advances.

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

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

(iv) The Federal awarding agency shall require recipients to submit the SF–269 or SF–269A (an original and no more than two copies no later than 30 days after the end of each specified reporting period for quarterly and semi-

annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the Federal awarding agency upon request of the recipient.

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

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

(ii) Federal awarding agencies may require forecasts of Federal cash requirements in the ''Remarks'' section of the report.

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

(iv) Recipients shall be required to submit not more than the original and two copies of the SF–272 15 calendar days following the end of each quarter. The Federal awarding agencies may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

(v) Federal awarding agencies may waive the requirement for submission of the SF–272 for any one of the following reasons:

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

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

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

(b) When the Federal awarding agency needs additional information or more frequent reports, the following shall be observed.

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

(2) When a Federal awarding agency determines that a recipient's accounting system does not meet the standards in § 3019.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. The Federal awarding agency, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) Federal awarding agencies are encouraged to shade out any line item on any report if not necessary.

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

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

### § 3019.53 Retention and access requirements for records.

(a) This section 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.

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

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

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

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

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph (g) of this section.

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

(d) The Federal awarding agency 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, a Federal awarding agency may make arrangements for recipients to retain any records that are continuously needed for joint use.

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

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

(g) Indirect cost rate proposals, cost allocations 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 the Federal awarding agency or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) If not submitted for negotiation. If the recipient is not required to submit to the Federal awarding agency 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

### § 3019.60 Purpose of termination and enforcement.

Sections 3019.61 and 3019.62 set forth uniform suspension, termination and enforcement procedures.

### § 3019.61 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 the Federal awarding agency, if a recipient materially fails to comply with the terms and conditions of an award.

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

(3) By the recipient upon sending to the Federal awarding agency written notification setting forth the reasons

for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a)(1) or (2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 3019.71(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.

### § 3019.62 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Federal awarding agency may, in addition to imposing any of the special conditions outlined in § 3019.14, take one or more of the following actions, as appropriate in the circumstances.

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

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

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

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

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

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

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension of 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 the Federal awarding agency implementing regulations (see § 3019.13).

## Subpart D—After-the-Award Requirements

### § 3019.70 Purpose.

Sections 3019.71 through 3019.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

### § 3019.71 Closeout procedures.

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

(b) Unless the Federal awarding agency 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 agency implementing instructions.

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

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

(e) When authorized by the terms and conditions of the award, the Federal awarding agency 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 §§3019.31 through 3019.37.

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

**§3019.72 Subsequent adjustments and continuing responsibilities.**

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

(1) The right of the Federal awarding agency 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 §3019.26.

(4) Property management requirements in §§3019.31 through 3019.37.

(5) Records retention as required in §3019.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Federal awarding agency and the recipient, provided the responsibilities of the recipient referred to in §3019.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

**§3019.73 Collection of amounts due.**

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

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

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

(3) Taking other action permitted by statute.

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

## APPENDIX A TO PART 3019—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 the Federal awarding agency.

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 the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $2000 for construction contracts and in excess of $2500 for other contracts that involve the employment of mechanics or laborers shall include a 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 work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

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

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 the Federal awarding agency 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)*—All parties doing business with the Department of Agriculture should consult the Department's regulations for debarment and suspension found at 7 CFR 3017. 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.'' 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.

## PART 3051—AUDITS OF INSTITUTIONS OF HIGHER EDUCATION AND OTHER NONPROFIT INSTITUTIONS

Sec.

3051.1 Purpose.
3051.2 Policy.
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APPENDIX A TO PART 3051—OMB CIRCULAR A–133, AUDITS OF INSTITUTIONS OF HIGHER EDUCATION AND OTHER NONPROFIT INSTITUTIONS

AUTHORITY: 5 U.S.C. 301.

SOURCE: 58 FR 41412, Aug. 3, 1993, unless otherwise noted.

### §3051.1 Purpose.

This part establishes audit requirements for institutions of higher education and other nonprofit institutions receiving Federal financial assistance or Federal cost-type contracts used to buy services or goods for the use of the Federal Government, from the United States Department of Agriculture (USDA) and assigns USDA agency responsibilities for implementing and monitoring those responsibilities. Additionally, this part implements the Office of Management and Budget (OMB) Circular A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions.

### §3051.2 Policy.

USDA requires audits from institutions of higher education and other nonprofit institutions that receive Federal financial assistance or Federal cost-type contracts used to buy services or goods for the use of the Federal Government, from USDA directly or indirectly as a subrecipient which are subject to the requirements of OMB Circular A–133, included herein as Appendix A of this part.

### §3051.3 Scope.

This part applies whenever USDA provides Federal financial assistance or Federal cost-type contracts used to buy services or goods for the use of the Federal Government, directly or indirectly to institutions of higher education and other nonprofit institutions. The USDA Office of Finance and Management (OFM) must approve any proposed exception to or deviation from the regulations in this part. Any approved exceptions to this part based on statute, or other approved deviations, will be promulgated through USDA agency-specific program regulations. Audits shall be made by an independent auditor, as defined in OMB Circular A–133, in accordance with Government Auditing Standards covering financial audits issued by the Comptroller General of the United States and the requirements of OMB Circular A–133.

### §3051.4 Definitions.

(a) *One program* is defined as:

(1) One categorical Federal assistance program; or

(2) A cluster of closely related categorical food assistance programs and the categorical food assistance programs are awards under the Child Nutrition Cluster or the Food Distribution Cluster; or

(3) One cost-reimbursement contract to buy services or goods for the use of the Federal Government as described in the definition of ''award'' in OMB Circular A–133.

(b) *Program-specific audit* is defined as:

(1) An audit of one program; and

(2) Under the Food Distribution Cluster, a program-specific audit of a parent organization includes the nonprofit organizations that operate as distribution sites or congregate meal service sites if they receive assistance through the parent organization consisting of or almost entirely of commodities, if the following criteria are met:

(i) The organization that operates the distribution site or congregate meal site receives Federal financial assistance solely under The Emergency Food Assistance Program (TEFAP), the Commodity Supplemental Food Program (CSFP), and/or the Food Commodities for Soup Kitchens/Food Banks Program (SKFB);

(ii) The total Federal financial assistance received is at least $25,000 but less than $100,000 (cash and commodities combined) in a fiscal year; and

(iii) Any cash assistance included in the Federal financial assistance under TEFAP and/or CSFP does not exceed $25,000 in a fiscal year.

### §3051.5 Basic requirements.

(a) If not included within the scope of a single audit obtained in accordance with the Single Audit Act of 1984 and OMB Circular A–128, institutions of higher education and other nonprofit institutions that receive $100,000 or more a year in USDA Federal financial assistance or Federal cost-type contracts used to buy services and goods for the use of the Federal Government, shall have an audit conducted in accordance with the requirements of

OMB Circular A–133. However, nonprofit institutions and organizations meeting the above criteria but participating in only one program have the option of having an audit in accordance with the provisions of OMB Circular A–133 or a program-specific audit. Such program-specific financial audits shall be performed in accordance with the Government Auditing Standards covering financial audits issued by the Comptroller General of the United States. In addition, the program-specific audit shall be performed in accordance with:

(1) Any applicable USDA audit guide,

(2) Any applicable compliance tests contained in the OMB Compliance Supplement for the specific program involved, or

(3) any program-specific audit regulations.

(4) If the program is not covered by paragraphs (a)(1) through (3) of this section, the auditor shall design appropriate compliance tests in accordance with the Government Auditing Standards.

(b) Nonprofit institutions and organizations that receive $25,000 or more but less than $100,000 in Federal financial assistance or Federal cost-type contracts used to buy services and goods for the use of the Federal Government, may opt for an audit of each Federal award or a program-specific audit. Otherwise, an audit prepared in accordance with the provisions of appendix A of this part prevails.

(c) Nonprofit institutions and organizations that receive direct or indirect USDA Federal financial assistance or Federal cost-type contracts used to buy services and goods for the use of the Federal Government, totalling less than $25,000 are exempt from Federal audit requirements. However, records must be available for review by appropriate officials of USDA, the General Accounting Office (GAO) or a subgranting entity.

(d) USDA OFM may authorize an exception on a case-by-case basis to the requirements of this section for an organizational audit when requested by a nonprofit organization that receives Federal financial assistance under two or more programs that are substantially similar and the requesting organization can demonstrate that a more limited audit would satisfy the purposes of OMB Circular A–133.

**§ 3051.6 Assignment of responsibilities.**

(a) USDA OFM shall:

(1) Have lead responsibility for assuring implementation and compliance with the regulations in this part; and

(2) Coordinate, consolidate, and prepare any reports concerning the effectiveness of implementation of the regulations in this part.

(b) Each USDA awarding agency shall:

(1) Require as a term of their Federal financial assistance provided to, or cost-reimbursement contract awarded to institutions of higher education and other nonprofit institutions that an audit be conducted and report submitted in a timely manner to a designated official in the awarding agency and the OMB assigned cognizant agency, if one has been assigned. In a timely manner means the audit report shall be due within 30 days after the completion of the audit. The audit should be completed and the report submitted not later than 13 months after the end of the recipient's fiscal year unless a longer period is agreed to with the cognizant or awarding agency.

(2) Require that the recipient maintain records identifying the source and amounts of Federal awards received by using the Catalogue of Federal Domestic Assistance (CFDA) Numbers. CFDA numbers are not required for Research and Development and Student Financial Aid.

(3) Provide a copy of the regulations in this part to recipients or subrecipients, upon request.

(4) Ensure required audit reports are received from recipients to which awards have been made.

(5) Determine if an audit report adequately addresses the agency's needs or, if not, determine if a followup audit is necessary. Advise the Office of Inspector General (OIG) of any problem audits.

(6) Ensure that appropriate action is taken on all audit findings and recommendations pursuant to the Supplemental Appropriations and Rescission

Act of 1980 (Pub. L. 96–304); OMB Circular A–50, Audit Followup; and Departmental Regulation 1720–1 which prescribes USDA's internal process for audit followup, management decisions and final action.

(7) Coordinate with the recipient to seek corrective action on system deficiencies and resolution of other issues identified in the audit. Seek the views of affected awarding agencies before entering into negotiations and obtain their concurrences before entering into a final agreement.

(8) Take appropriate action when the recipient neglects to obtain an audit or provide a report or take action to resolve findings and/or recommendations, and/or when the report does not meet the requirements of OMB Circular A–133, including the imposition of sanctions. If a cognizant Federal agency determines the audit is unacceptable, the cost of the audit shall not be reimbursed and other sanctions shall be considered if the recipient fails to obtain an acceptable audit.

(9) Establish and maintain appropriate records as to the effectiveness of institutions of higher education and other nonprofit organizations in carrying out the provisions of OMB Circular A–133.

(10) Coordinate the responses on audit reports from other USDA agencies when assigned as the lead agency.

(c) OIG shall:

(1) Follow the requirements set forth in OMB Circular A–133 when USDA is assigned as the cognizant agency or has general oversight responsibility.

(2) Provide or arrange for additional audit coverage, as appropriate, or when requested by an awarding agency.

(3) Designate the USDA lead agency for coordinating audit followup for cross-cutting audit findings that affect the programs of more than one USDA or non-USDA awarding agency. OIG will also coordinate the responses from other Federal agencies.

(4) Upon request or when required, if OMB has not designated a cognizant agency, OIG shall coordinate with other Federal Departments to determine which Department has general oversight responsibility.

(d) Institutions of higher education and other nonprofit institutions shall:

(1) Follow the audit arrangements and requirements set forth in appendix A to this part and the following:

(i) Use their own procedures to arrange for and prescribe the scope of independent audits, provided that such audits comply with the requirements set forth in this part.

(ii) Include provisions in audit contracts requiring the audit organization to retain audit working papers and reports in accordance with OMB Circular A–133.

(iii) Ensure that their independent auditor is responsible for:

(A) Reviewing their system for monitoring subrecipients as well as obtaining and considering the impact of the subrecipient's audit reports.

(B) Testing to determine whether these systems are functioning in accordance with prescribed procedures.

(C) Commenting on their monitoring procedure, if warranted by the circumstances.

(D) Considering whether subrecipient audits require adjustment of their financial statements, footnote disclosure, or modification of the auditor's report.

(iv) Failure of recipients to arrange for the required audits set forth in appendix A of this part, or failure to assure that acceptable audits are performed, will result in OIG coordinating with the USDA awarding agency to arrange for the necessary audit work. Recipients or subrecipients shall not charge USDA any portion of the cost of an audit not meeting USDA requirements. If a cognizant Federal agency determines the audit is unacceptable, the cost of the audit shall not be reimbursed and other sanctions shall be considered if the recipient fails to obtain an acceptable audit.

(v) Recipients are responsible for imposing like requirements upon subrecipients and may not pass on the cost of an audit that does not meet the requirements of OMB Circular A–133. However, if there is an indirect cost allocation plan with audit costs included, the following year's indirect cost allocation plan will offset the cost. In addition to sanctions, the USDA awarding

agency may incorporate into the agreement that reimbursement for the additional audit costs incurred by the agency will either be withheld from future Federal financial assistance awards or by other means.

(2) Recipients must establish a system for:

(i) Assuring that subrecipients meet the requirements of the regulations in this part.

(ii) Evaluating the acceptability of subrecipient audits.

(iii) Following up on results of subrecipient audits.

(3) Recipients must ensure that subrecipient reports are transmitted by the subrecipient to the recipient. These reports shall not be routinely transmitted to USDA. Instead, the recipient shall retain all subrecipient audit reports on file as required by appendix A of this part and make them available to the awarding agency, OIG, GAO officials, or their designees, upon request.

(4) Take appropriate action on subrecipient audits and incorporate the results of these audits into their financial records and related reports. Questioned costs at the subrecipient level may be contingent liabilities as far as the recipient is concerned and should be reported as such, when appropriate.

(5) Each recipient shall establish a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

## APPENDIX A TO PART 3051—OMB CIRCULAR A–133, AUDITS OF INSTITUTIONS OF HIGHER EDUCATION AND OTHER NONPROFIT INSTITUTIONS

[OBM Circular No. A–133]

To the Heads of Executive Departments and Establishments

Subject: Audits of Institutions of Higher Education and Other Nonprofit Institutions

1. *Purpose.* Circular A–133 establishes audit requirements and defines Federal responsibilities for implementing and monitoring such requirements for institutions of higher education and other nonprofit institutions receiving Federal awards.

2. *Authority.* Circular A–133 is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; Reorganization Plan No. 2 of 1970; and Executive Order No. 11541.

3. *Supersession.* Circular A–133 supersedes Attachment F, subparagraph 2h, of Circular A–110, ''Uniform Administrative Requirements for Grants and other Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.''

4. *Applicability.* The provisions of Circular A–133 apply to:

a. Federal departments and agencies responsible for administering programs that involve grants, cost-type contracts and other agreements with institutions of higher education and other nonprofit recipients.

b. Nonprofit institutions, whether they are recipients, receiving awards directly from Federal agencies, or are sub-recipients, receiving awards indirectly through other recipients.

These principles, to the extent permitted by law, constitute guidance to be applied by agencies consistent with and within the discretion, conferred by the statutes governing agency action.

5. *Requirements and Responsibilities.*

The specific requirements and responsibilities of Federal departments and agencies and institutions of higher education and other nonprofit institutions are set forth in the attachment.

6. *Effective Date.* The provisions of Circular A–133 are effective upon publication and shall apply to audits of nonprofit institutions for fiscal years that begin on or after January 1, 1990. Earlier implementation is encouraged. However, until this Circular is implemented, the audit provisions of Attachment F to Circular A–110 shall continue to be observed.

7. *Policy Review (Sunset) Date.* Circular A–133 will have a policy review three years from the date of issuance.

8. *Inquiries.* Further information concerning Circular A–133 may be obtained by contacting the Financial Management Division, Office of Management and Budget, Washington, DC 20503, telephone (202) 395–3993.

Richard G. Darman,
*Director.*

[OMB Circular A–133]

### AUDITS OF INSTITUTIONS OF HIGHER EDUCATION AND OTHER NONPROFIT INSTITUTIONS

*Attachment*

1. *Definitions.* For the purposes of this Circular, the following definitions apply:

a. ''Award'' means financial assistance, and Federal cost-type contracts used to buy services or goods for the use of the Federal Government. It includes awards received directly from the Federal agencies or indirectly through recipients. It does not include procurement contracts to vendors under grants or contracts, used to buy goods or

services. Audits of such vendors shall be covered by the terms and conditions of the contract.

b. ''Cognizant agency'' means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 3 of this Attachment.

c. ''Coordinated audit approach'' means an audit wherein the independent auditor, and other Federal and non-federal auditors consider each other's work, in determining the nature, timing, and extent of his or her own auditing procedures. A coordinated audit must be conducted in accordance with *Government Auditing Standards* and meet the objectives and reporting requirements set forth in paragraph 12(b) and 15, respectively, of this Attachment. The objective of the coordinated audit approach is to minimize duplication of audit effort, but not to limit the scope of the audit work so as to preclude the independent auditor from meeting the objectives set forth in paragraph 12(b) or issuing the reports required in paragraph 15 in a timely manner.

d. ''Federal agency'' has the same meaning as the term 'agency' in Section 551(1) of Title 5, United States Code.

e. ''Federal Financial Assistance.''

(1) ''Federal financial assistance'' means assistance provided by a Federal agency to a recipient or sub-recipient to carry out a program. Such assistance may be in the form of:

—grants;
—contracts;
—cooperative agreements;
—loans;
—loan guarantees;
—property;
—interest subsidies;
—insurance;
—direct appropriations;
—other non-cash assistance.

(2) Such assistance does not include direct Federal cash assistance to individuals.

(3) Such assistance includes awards received directly from Federal agencies, or indirectly when sub-recipients receive funds identified as Federal funds by recipients.

(4) The granting agency is responsible for identifying the source of funds awarded to recipients; the recipient is responsible for identifying the source of funds awarded to sub-recipients.

f. ''Generally accepted accounting principles'' has the meaning specified in the *Government Auditing Standards.*

g. ''Independent auditor'' means:

(1) A Federal, State, or local government auditor who meets the standards specified in the *Government Auditing Standards;* or

(2) A public accountant who meets such standards.

h. ''Internal control structure'' means the policies and procedures established to provide reasonable assurance that:

(1) Resource use is consistent with laws, regulations, and award terms;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

i. ''Major program'' means an individual award or a number of awards in a category of Federal assistance or support for which total expenditures are the larger of three percent of total Federal funds expended or $100,000, on which the auditor will be required to express an opinion as to whether the major program is being administered in compliance with laws and regulations.

Each of the following categories of Federal awards shall constitute a major program where total expenditures are the larger of three percent of total Federal funds expended or $100,000:

—Research and Development.
—Student Financial Aid.
—Individual awards not in the student aid or research and development category.

j. ''Management decision'' means the evaluation by the management of an establishment of the findings and recommendations included in an audit report and the issuance of a final decision by management concerning its response to such findings and recommendations, including actions concluded to be necessary.

k. ''Nonprofit institution'' means any corporation, trust, association, cooperative or other organization which 1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; 2) is not organized primarily for profit; and 3) uses its net proceeds to maintain, improve, and/or expand its operations. The term ''nonprofit institutions'' includes institutions of higher education, except those institutions that are audited as part of single audits in accordance with Circular A–128 ''Audits of State and Local Governments.'' The term does not include hospitals which are not affiliated with an institution of higher education, or State and local governments and Indian tribes covered by Circular A–128 ''Audits of State and Local Governments.''

l. ''Oversight'' agency means the Federal agency that provides the predominant amount of direct funding to a recipient not assigned a cognizant agency, unless no direct funding is received. Where there is no direct funding, the Federal agency with the predominant indirect funding will assume the general oversight responsibilities. The duties of the oversight agency are described in paragraph 4 of this Attachment.

m. ''Recipient'' means an organization receiving financial assistance to carry out a program directly from Federal agencies.

n. ''Research and development'' includes all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other nonprofit 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.

o. ''Student Financial Aid'' includes those programs of general student assistance in which institutions participate, such as those authorized by Title IV of the Higher Education Act of 1965 which is administered by the U.S. Department of Education and similar programs provided by other Federal agencies. It does not include programs which provide fellowships or similar awards to students on a competitive basis, or for specified studies or research.

p. ''Sub-recipient'' means any person or government department, agency, establishment, or nonprofit organization that receives financial assistance to carry out a program through a primary recipient or other sub-recipient, but does not include an individual that is a beneficiary of such a program. A sub-recipient may also be a direct recipient of Federal awards under other agreements.

q. ''Vendor'' means an organization providing a recipient or sub-recipient with generally required goods or services that are related to the administrative support of the Federal assistance program.

2. *Audit of Nonprofit Institutions.*

a. *Requirements Based on Awards Received.*

(1) Nonprofit institutions that receive $100,000 or more a year in Federal awards shall have an audit made in accordance with the provisions of this Circular. However, nonprofit institutions receiving $100,000 or more but receiving awards under only one program have the option of having an audit of their institution prepared in accordance with the provisions of the Circular or having an audit made of the one program. For prior or subsequent years, when an institution has only loan guarantees or outstanding loans that were made previously, the institution may be required to conduct audits for those programs, in accordance with regulations of the Federal agencies providing those guarantees or loans.

(2) Nonprofit institutions that receive at least $25,000 but less than $100,000 a year in Federal awards shall have an audit made in accordance with this Circular or have an audit made of each Federal award, in accordance with Federal laws and regulations governing the programs in which they participate.

(3) Nonprofit institutions receiving less than $25,000 a year in Federal awards are exempt from Federal audit requirements, but records must be available for review by appropriate officials of the Federal grantor agency or subgranting entity.

b. *Oversight by Federal Agencies.*

(1) To each of the larger nonprofit institutions the Office of Management and Budget (OMB) will assign a Federal agency as the cognizant agency for monitoring audits and ensuring the resolution of audit findings that affect the programs of more than one agency.

(2) Smaller institutions not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them with the most funds.

(3) Assignments to Federal cognizant agencies for carrying out responsibilities in this section are set forth in a separate supplement to this Circular.

(4) Federal Government-owned, contractor-operated facilities at institutions or laboratories operated primarily for the Government are not included in the cognizance assignments. These will remain the responsibility of the contracting agencies. The listed assignments cover all of the functions in this Circular unless otherwise indicated. The Office of Management and Budget will coordinate changes in agency assignments.

3. *Cognizant Agency Responsibilities.* A cognizant agency shall:

a. Ensure that audit are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

b. Provide technical advice and liaison to institutions and independent auditors.

c. Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

d. Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. A cognizant agency should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

e. Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

f. Coordinate, to the extent practicable, audits or reviews made for Federal agencies that are in addition to the audits made pursuant to this Circular, so that the additional audits or reviews build upon audits performed in accordance with the Circular.

g. Ensure the resolution of audit findings that affect the programs of more than one agency.

h. Seek the views of other interested agencies before completing a coordinated program.

i. Help coordinate the audit work and reporting responsibilities among independent public accountants, State auditors, and both resident and non-resident Federal auditors to achieve the most cost-effective audit.

4. *Oversight Agency Responsibilities.* An oversight agency shall provide technical advice and counsel to institutions and independent auditors when requested by the recipient. The oversight agency may assume all or some of the responsibilities normally performed by a cognizant agency.

5. *Recipient Responsibilities.* A recipient that receives a Federal award and provides $25,000 or more of it during its fiscal year to a sub-recipient shall:

a. Ensure that the nonprofit institution sub-recipients that receive $25,000 or more have met the audit requirements of this Circular, and that sub-recipients subject to OMB Circular A–128 have met the audit requirements of that Circular;

b. Ensure that appropriate corrective action is taken within six months after receipt of the sub-recipient audit report in instances of noncompliance with Federal laws and regulations;

c. Consider whether sub-recipient audits necessitate adjustment of the recipient's own records; and

d. Require each sub-recipient to permit independent auditors to have access to the records and financial statements as necessary for the recipient to comply with this Circular.

6. *Relation to Other Audit Requirements.*

a. An audit made in accordance with this Circular shall be in lieu of any financial audit required under individual Federal awards. To the extent that an audit made in accordance with this Circular provides Federal agencies with the information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits or reviews necessary to carry out responsibilities under Federal law and regulation. Any additional Federal audits or reviews shall be planned and carried out in such a way as to build upon work performed by the independent auditor.

b. Audit planning by Federal audit agencies should consider the extent to which reliance can be placed upon work performed by other auditors. Such auditors include State, local, Federal, and other independent auditors, and a recipient's internal auditors. Reliance placed upon the work of other auditors should be documented and in accordance with *Government Auditing Standards.*

c. The provisions of this Circular do not limit the authority of Federal agencies to make or contract for audits and evaluations of Federal awards, nor do they limit the authority of any Federal agency Inspector General or other Federal official.

d. The provisions of this Circular do not authorize any institution or sub-recipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits, evaluations or reviews.

e. A Federal agency that makes or contracts for audits, in addition to the audits made by recipients pursuant to this Circular, shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits or reviews include financial, performance audits and program evaluations.

7. *Frequency of Audit.* Audits shall usually be performed annually but not less frequently than every two years.

8. *Sanctions.* No audit costs may be charged to Federal awards when audits required by this Circular have not been made or have been made but not in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit in accordance with the Circular, Federal agencies must consider appropriate sanctions including:

—withholding a percentage of awards until the audit is completed satisfactorily;

—withholding or disallowing overhead costs; or

—suspending Federal awards until the audit is made.

9. *Audit Costs.* The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal awards. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provisions of Circular A–21, ''Cost Principles for Universities'' or Circular A–122, ''Cost Principles for Nonprofit Organizations,'' FAR subpart 31, or other applicable cost principles or regulations.

10. *Auditor Selection.* In arranging for audit services institutions shall follow the procurement standards prescribed by Circular A–110, ''Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospital and other Nonprofit Organizations.''

11. *Small and Minority Audit Firms.*

a. Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the

maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular.

b. Recipients of Federal awards shall take the following steps to further this goal:

(1) Ensure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable;

(2) Make information on forthcoming opportunities available and arrange timeframes for the audit to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals;

(3) Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals;

(4) Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs, and in cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities;

(5) Encourage contracting with consortiums of small audit firms as described in section (1), above, when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals; and

(6) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

12. *Scope of Audit and Audit Objectives.*

a. The audit shall be made by an independent auditor in accordance with *Government Auditing Standards* developed by the Comptroller General of the United States covering financial audits. An audit under this Circular should be an organization-wide audit of the institution. However, there may be instances where Federal auditors are performing audits or are planning to perform audits at nonprofit institutions. In these cases, to minimize duplication of audit work, a coordinated audit approach may be agreed upon between the independent auditor, the recipient and the cognizant agency or the oversight agency. Those auditors who assume responsibility for any or all of the reports called for by paragraph 15 should follow guidance set forth in *Government Auditing Standards* in using work performed by others.

b. The auditor shall determine whether:

(1) The financial statements of the institution present fairly its financial position and the results of its operations in accordance with generally accepted accounting principles;

(2) The institution has an internal control structure to provide reasonable assurance that the institution is managing Federal awards in compliance with applicable laws and regulations, and controls that ensure compliance with the laws and regulations that could have a material impact on the financial statements; and

(3) The institution has complied with laws and regulations that may have a direct and material effect on its financial statement amounts and on each major Federal program.

13. *Internal Controls Over Federal Awards; Compliance Reviews.*

a. *General.* The independent auditor shall determine and report on whether the recipient has an internal control structure to provide reasonable assurance that it is managing Federal awards in compliance with applicable laws, regulations, and contract terms, and that it safeguards Federal funds. In performing these reviews, independent auditors should rely upon work performed by a recipient's internal auditors to the maximum extent possible. The extent of such reliance should be based upon the *Government Auditing Standards.*

b. *Internal Control Review.*

(1) In order to provide this assurance on internal controls, the auditor must obtain an understanding of the internal control structure and assess levels of internal control risk. After obtaining an understanding of the controls, the assessment must be made whether or not the auditor intends to place reliance on the internal control structure.

(2) As part of this review, the auditor shall:

(a) Perform tests of controls to evaluate the effectiveness of the design and operation of the policies and procedures in preventing or detecting material noncompliance. Tests of controls will not be required for those areas where the internal control structure policies and procedures are likely to be ineffective in preventing or detecting noncompliance, in which case a reportable condition or a material weakness should be reported in accordance with paragraph 15 c(2) of this Circular.

(b) Review the recipient's system for monitoring sub-recipients and obtaining and acting on sub-recipient audit reports.

(c) Determine whether controls are in effect to ensure direct and indirect costs were computed and billed in accordance with the guidance provided in the general requirements section of the compliance supplement to this Circular.

c. *Compliance Review.*

(1) The auditor shall determine whether the recipient has complied with laws and regulations that may have a direct and material effect on any of its major Federal programs. In addition, transactions selected for

non-major programs shall be tested for compliance with Federal laws and regulations that apply to such transactions.

(2) In order to determine which major programs are to be tested for compliance, recipients shall identify, in their accounts, all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies, through other State and local governments or other recipients. To assist recipients in identifying Federal awards, Federal agencies and primary recipients shall provide the *Catalog of Federal Domestic Assistance* (CFDA) numbers to the recipients when making the awards.

(3) The review must include the selection of an adequate number of transactions from each major Federal financial assistance program so that the auditor obtains sufficient evidence to support the opinion on compliance required by paragraph 15c(3) of this Attachment. The selection and testing of transactions shall be based on the auditors' professional judgment considering such factors as the amount of expenditures for the program; the newness of the program or changes in its conditions; prior experience with the program particularly as revealed in audits and other evaluations (*e.g.*, inspections, program reviews, or system reviews required by Federal Acquisition Regulations); the extent to which the program is carried out through sub-recipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(4) In making the test of transactions, the auditor shall determine whether:

—the amounts reported as expenditures were for allowable services, and

—the records show that those who received services or benefits were eligible to receive them.

(5) In addition to transaction testing, the auditor shall determine whether:

—matching requirements, levels of effort and earmarking limitations were met,

—Federal financial reports and claims for advances and reimbursement contain information that is supported by books and records from which the basic financial statements have been prepared, and

—amounts claimed or used for matching were determined in accordance with 1) OMB Circular A–21, ''Cost Principles for Educational Institutions''; 2) matching or cost sharing requirements in Circular A–110, ''Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations''; 3) Circular A–122, ''Cost Principles for Nonprofit Organizations''; 4) FAR subpart 31 cost principles; and 5) other applicable cost principles or regulations.

(6) The principal compliance requirements of the largest Federal programs may be ascertained by referring to the ''*Compliance Supplement for Single Audits of Educational Institutions and Other Nonprofit Organizations*,'' and the ''*Compliance Supplement for Single Audits of State and Local Governments*,'' issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplements, the auditor should ascertain compliance requirements by reviewing the statutes, regulations, and agreements governing individual programs.

(7) Transactions related to other awards that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

14. *Illegal Acts.* If, during or in connection with the audit of a nonprofit institution, the auditor becomes aware of illegal acts, such acts shall be reported in accordance with the provisions of the *Government Auditing Standards.*

15. *Audit Reports.*

a. Audit reports must be prepared at the completion of the audit.

b. The audit report shall state that the audit was made in accordance with the provisions of this Circular.

c. The report shall be made up of at least the following three parts:

(1) The financial statements and a schedule of Federal awards and the auditor's report on the statements and the schedule. The schedule of Federal awards should identify major programs and show the total expenditures for each program. Individual major programs other than Research and Development and Student Aid should be listed by catalog number as identified in the *Catalog of Federal Domestic Assistance.* Expenditures for Federal programs other than major programs shall be shown under the caption ''other Federal assistance.'' Also, the value of non-cash assistance such as loan guarantees, food commodities or donated surplus properties or the outstanding balance of loans should be disclosed in the schedule.

(2) A written report of the independent auditor's understanding of the internal control structure and the assessment of control risk. The auditor's report should include as a minimum: 1) The scope of the work in obtaining understanding of the internal control structure and in assessing the control risk, 2) the nonprofit institution's significant internal controls or control structure including the controls established to ensure compliance with laws and regulations that have

a material impact on the financial statements and those that provide reasonable assurance that Federal awards are being managed in compliance with applicable laws and regulations, and 3) the reportable conditions, including the identification of material weaknesses, identified as a result of the auditor's work in understanding and assessing the control risk. If the auditor limits his/her consideration of the internal control structure for any reason, the circumstances should be disclosed in the report.

(3) The auditor's report on compliance containing:

—An opinion as to whether each major Federal program was being administered in compliance with laws and regulations applicable to the matters described in paragraph 13(c)(3) of this Attachment, including compliance with laws and regulations pertaining to financial reports and claims for advances and reimbursements;

—A statement of positive assurance on those items that were tested for compliance and negative assurance on those items not tested;

—Material findings of noncompliance presented in their proper perspective:

• The size of the universe in number of items and dollars,

• The number and dollar amount of transactions tested by the auditors,

• The number and corresponding dollar amount of instances of noncompliance;

—Where findings are specific to a particular Federal award, an identification of total amounts questioned, if any, for each Federal award, as a result of noncompliance and the auditor's recommendations for necessary corrective action.

c. The three parts of the audit report may be bound into a single document, or presented at the same time as separate documents.

d. Nonmaterial findings need not be disclosed with the compliance report but should be reported in writing to the recipient in a separate communication. The recipient, in turn, should forward the findings to the Federal grantor agencies or subgrantor sources.

e. All fraud or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, may be covered in a separate written report submitted in accordance with the *Government Auditing Standards.*

f. The auditor's report should disclose the status of known but uncorrected significant material findings and recommendations from prior audits that affect the current audit objective as specified in the *Government Auditing Standards.*

g. In additional to the audit report, the recipient shall provide a report of its comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

h. Copies of the audit report shall be submitted in accordance with the reporting standards for financial audits contained in the *Government Auditing Standards.* Sub-recipient auditors shall submit copies to recipients that provided Federal awards. The report shall be due within 30 days after the completion of the audit, but the audit should be completed and the report submitted not later than 13 months after the end of the recipient's fiscal year unless a longer period is agreed to with the cognizant or oversight agency.

i. Recipients of more than $100,000 in Federal awards shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audit reports on file.

j. Recipients shall keep audit reports, including subrecipient reports, on file for three years from their issuance.

16. *Audit Resolution.*

a. As provided in paragraph 3, the cognizant agency shall be responsible for ensuring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and the agency. Alternative arrangements may be made on case-by-case basis by agreement among the agencies concerned.

b. A management decision shall be made within six months after receipt of the report by the Federal agencies responsible for audit resolution. Corrective action should proceed as rapidly as possible.

17. *Audit Workpapers and Reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.