AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

PART 32—ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

Subpart A—General

Sec.
32.1 Purpose.
32.2 Definitions
32.3 Effect on other issuances.
32.4 Deviations.
32.5 Subawards.

Subpart B—Pre-Award Requirements

32.10 Purpose.
32.11 Pre-award policies.
32.12 Forms for applying for Federal assistance.
32.13 Debarment and suspension.
32.14 Special award conditions.
32.15 Metric system of measurement.
32.16 Resource Conservation and Recovery Act (RCRA).
32.17 Certifications and representations.

Subpart C—Post-Award Requirements

FINANCIAL AND PROGRAM MANAGEMENT

32.20 Purpose of financial and program management.
32.21 Standards for financial management systems.
32.22 Payment.
32.23 Cost sharing or matching.
32.24 Program income.
32.25 Revision of budget and program plans.
32.26 Non-Federal audits.
32.27 Allowable costs.
32.28 Period of availability of funds.

PROPERTY STANDARDS

32.30 Purpose of property standards.
32.31 Insurance coverage.
32.32 Real property.
32.33 Federally-owned and exempt property.
32.34 Equipment.
32.35 Supplies.
32.36 Intangible property.
32.37 Property trust relationship.

PROCUREMENT STANDARDS

32.40 Purpose of procurement standards.
32.41 Recipient responsibilities.
32.42 Codes of conduct.
32.43 Competition.
32.44 Procurement procedures.
32.45 Cost and price analysis.
32.46 Procurement records.
32.47 Contract administration.
32.48 Contract provisions.
32.49 Resource Conservation and Recovery Act.

REPORTS AND RECORDS

32.50 Purpose of reports and records.
32.51 Monitoring and reporting program performance.
32.52 Financial reporting.
32.53 Retention and access requirements for records.

TERMINATION AND ENFORCEMENT

32.60 Purpose of termination and enforcement.
32.61 Termination.
32.62 Enforcement.

Subpart D—After-the-Award Requirements

32.70 Purpose.
32.71 Closeout procedures.
32.72 Subsequent adjustments and continuing responsibilities.
32.73 Collection of amounts due.

APPENDIX A TO PART 32—CONTRACT PROVISIONS

AUTHORITY: 5 U.S.C. 301 and 10 U.S.C. 113.

SOURCE: 63 FR 12188, Mar. 12, 1998, unless otherwise noted.

Subpart A—General

§32.1 Purpose.

(a) *General.* This part implements OMB Circular A–110[1] and establishes uniform administrative requirements for awards and subawards to institutions of higher education, hospitals, and other non-governmental, non-profit organizations.

(b) *Relationship to other parts.* This part is an integral part of the DoD Grant and Agreement Regulations (DoDGARs), which comprise this subchapter of the Code of Federal Regulations. This part includes references to other parts of the DoDGARs that implement Governmentwide guidance and provide uniform internal policies and procedures for DoD Components that make or administer awards. Although parts 21 and 22 of this subchapter do not impose any direct requirements on recipients, and recipients therefore are not required to be familiar with those parts, the information in those parts

[1] For copies of the Circular, contact the Office of Management and Budget, EOP Publications, 725 17th St. NW, New Executive Office Building, Washington, DC 20503.

concerning internal policies and procedures should be helpful to recipients of DoD awards.

(c) *Prime awards.* DoD Components shall apply the provisions of this part to awards to recipients that are institutions of higher education, hospitals, and other non-profit organizations. DoD Components shall not impose additional or inconsistent requirements, except as provided in §§32.4 and 32.14, or unless specifically required by Federal statute or executive order.

(d) *Subawards.* Any legal entity that receives an award from a DoD Component shall apply the provisions of this part to subawards with institutions of higher education, hospitals, and other non-profit organizations. Thus, a governmental or for-profit organization, whose prime award from a DoD Component is subject to 32 CFR part 33 or part 34, respectively, applies this part to subawards with institutions of higher education, hospitals, or other non-profit organizations. It should be noted that subawards are for the performance of substantive work under awards, and are distinct from contracts for procuring goods and services. It should be further noted that non-profit organizations that implement Federal programs for the States are also subject to State requirements.

§ 32.2 Definitions.

The following are definitions of terms used in this part. Grants officers are cautioned that terms may be defined differently in this part than they are in other parts of the DoD Grant and Agreement Regulations, because this part implements OMB Circular A–110 and uses definitions as stated in that Circular. In such cases, the definition given in this section applies to the term as it is used in this part, and the definition given in other parts applies to the term as it is used in those parts. For example, *suspension* is defined in this section to mean temporary withdrawal of Federal sponsorship under an award, but is defined at 32 CFR 25.105 to be an action taken to exclude a person from participating in a grant, cooperative agreement, or other covered transaction.

Accrued expenditures. The charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

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

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

Accrued income. 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.

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

Acquisition cost of equipment. The net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

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

Award. Financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: Technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

Cash contributions. The recipient's cash outlay, including the outlay of

money contributed to the recipient by third parties.

Closeout. The process by which the grants officer administering an award made by a DoD Component determines that all applicable administrative actions and all required work of the award have been completed by the recipient and DoD Component.

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

Cost sharing or matching. That portion of project or program costs not borne by the Federal Government.

Date of completion. 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.

Disallowed costs. Those charges to an award that the grants officer administering an award made by a DoD Component determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

DoD Component. A Military Department, Defense Agency, DoD field activity, or organization within the Office of the Secretary of Defense that provides or administers an award to a recipient.

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

Excess property. Property under the control of any DoD Component that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

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

Federal funds authorized. The total amount of Federal funds obligated by a DoD Component 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.

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

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

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

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

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

Personal property. Property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

Prior approval. Written approval by an authorized official evidencing prior consent.

Program income. 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 § 32.24(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 program regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

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

Project period. The period established in the award document during which Federal sponsorship begins and ends.

Property. Real property and personal property (equipment, supplies, intangible property and debt instruments), unless stated otherwise.

Real property. Land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.

Recipient. An organization receiving financial assistance directly from DoD Components 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 nonprofit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term also includes consortia comprised of any combination of universities, other nonprofit organizations, governmental organizations, for-profit organizations, and other entities, to the extent that the consortia are legally incorporated as nonprofit organizations. 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.

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

Small award. An award not exceeding the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently $100,000).

Subaward. 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 this section.

Subrecipient. The legal entity to which a subaward is made and which is

accountable to the recipient for the use of the funds provided.

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

Suspension. An action by a DoD Component that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the DoD Component. Suspension of an award is a separate action from suspension of a participant under 32 CFR part 25.

Termination. The cancellation of an award, in whole or in part, at any time prior to the date of completion.

Third party in-kind contributions. 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 the value of goods and services directly benefiting and specifically identifiable to the project or program.

Unliquidated obligations. The amount of obligations incurred by the recipient:

(1) That have not been paid, if financial reports are prepared on a cash basis.

(2) For which an outlay has not been recorded, if reports are prepared on an accrued expenditure basis.

Unobligated balance. The portion of the funds authorized by a DoD Component that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

Unrecovered indirect cost. The difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

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

§ 32.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 32.4.

§ 32.4 Deviations.

(a) *Individual deviations*. Individual deviations affecting only one award may be approved by DoD Components in accordance with procedures stated in 32 CFR 21.125(a) and (c).

(b) *Small awards*. DoD Components may apply less restrictive requirements than the provisions of this part when awarding small awards, except for those requirements which are statutory.

(c) *Other class deviations*. (1) For classes of awards other than small awards, the Director of Defense Research and Engineering (DDR&E), or his or her designee, may grant exceptions from the requirements of this part:

(i) With the written concurrence of the Office of the Management and Budget (OMB). The DDR&E, or his or her designee, shall provide written notification to OMB of the Department of Defense's intention to grant a class deviation; and

(ii) When exceptions are not prohibited by statute.

(2) DoD Components shall request approval for such deviations in accordance with 32 CFR 21.125(b) and (c). However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances.

§ 32.5 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 32 CFR part 33. Subrecipients that are for-profit organizations are subject to 32 CFR part 34.

Subpart B—Pre-Award Requirements

§ 32.10 Purpose.

Sections 32.11 through 32.17 prescribe application forms and instructions and other pre-award matters.

§ 32.11 Pre-award policies.

(a) *Use of grants, cooperative agreements, and contracts.* (1) OMB Circular A–110 states that:

(i) In each instance, the Federal awarding agency shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract).

(ii) The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–6308) governs the use of grants, cooperative agreements, and contracts. Under that Act:

(A) 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.

(B) Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(C) 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.''

(2) In selecting the appropriate award instruments, DoD Components' grants officers shall comply with the DoD implementation of the Federal Grant and Cooperative Agreement Act at 32 CFR 21.205(a) and 32 CFR part 22, subpart B.

(b) *Public notice and priority setting.* As a matter of Governmentwide policy, Federal awarding agencies shall notify the public of intended funding priorities for programs that use discretionary awards, unless funding priorities are established by Federal statute. For DoD Components, compliance with competition policies and statutory requirements implemented in 32 CFR part 22, subpart C, shall constitute compliance with this Governmentwide policy.

§ 32.12 Forms for applying for Federal assistance.

(a) DoD Components 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 in place of or as a supplement to the Standard Form 424[2] (SF–424) series.

(b) Applicants shall use the SF–424 series or those forms and instructions prescribed by DoD Components.

(c) For Federal programs covered by E.O. 12372 (3 CFR, 1982 Comp., p. 197), ''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 DoD Component or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) DoD Components that do not use the SF–424 form should indicate whether the application is subject to review by the State under E.O. 12372.

§ 32.13 Debarment and suspension.

DoD Components and recipients shall comply with the nonprocurement debarment and suspension common rule at 32 CFR part 25. This common rule

[2] For copies of Standard Forms listed in this part, contact regional grants administration offices of the Office of Naval Research. Addresses for the offices are listed in the ''DoD Directory of Contract Administration Services Components,'' DLAH 4105.4, which can be obtained from: Defense Logistics Agency, Publications Distribution Division (DASC–WDM), 8725 John J. Kingman Rd., Suite 0119, Fort Belvoir, VA 22060–6220.

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.

§ 32.14 Special award conditions.

(a) DoD Components may impose additional requirements as needed, over and above those provided in this part, if an applicant or recipient:

(1) Has a history of poor performance;

(2) Is not financially stable;

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

(4) Has not conformed to the terms and conditions of a previous award; or

(5) Is not otherwise responsible.

(b) Before imposing additional requirements, DoD Components shall notify the applicant or recipient in writing as to:

(1) The nature of the additional requirements;

(2) The reason why the additional requirements are being imposed;

(3) The nature of the corrective action needed;

(4) The time allowed for completing the corrective actions; and

(5) The method for requesting reconsideration of the additional requirements imposed.

(c) Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

(d) Grants officers:

(1) Should coordinate the imposition and removal of special award conditions with the cognizant grants administration office identified in 32 CFR 22.710.

(2) Shall include in the award file the written notification to the recipient, described in paragraph (b) of this section, and the documentation required by 32 CFR 22.410(b).

§ 32.15 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, and for Federal agencies' procurements, grants, and other business-related activities. DoD grants officers shall comply with requirements concerning the use of the metric system at 32 CFR 22.530.

§ 32.16 Resource Conservation and Recovery Act (RCRA).

Recipients' procurements shall comply with applicable requirements of the Resource Conservation and Recovery Act (RCRA), as described at § 32.49.

§ 32.17 Certifications and representations.

(a) OMB Circular A–110 authorizes and encourages each Federal agency, unless prohibited by statute or codified regulation, 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. The Circular further states that annual certifications and representations, when used, shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

(b) DoD grants officers shall comply with the provisions concerning certifications and representations at 32 CFR 22.510. Those provisions ease burdens on recipients to the extent possible, given current statutory and regulatory impediments to obtaining all certifications on an annual basis. The provisions thereby also comply with the intent of OMB Circular A–110, to use less burdensome methods for obtaining certifications and representations, as such methods become feasible.

Subpart C—Post-Award Requirements

FINANCIAL AND PROGRAM MANAGEMENT

§ 32.20 Purpose of financial and program management.

Sections 32.21 through 32.28 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.

§ 32.21 Standards for financial management systems.

(a) DoD Components shall require recipients to relate financial data to performance data and develop unit cost information whenever practical. For awards that support research, it should be noted that it is generally not appropriate to develop unit cost information.

(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 § 32.52. If a DoD Component 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. As discussed in paragraph (a) of this section, unit cost data is generally not appropriate for awards that support research.

(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 should 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 (see § 32.27) 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 DoD Component, 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 DoD Component may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

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

§ 32.22 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 agreements under the Cash Management Improvement Act (CMIA) (31 U.S.C. 3335 and 6503) or default procedures in 31 CFR part 205.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain:

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

(2) Financial management systems that meet the standards for fund control and accountability as established in § 32.21. 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 DoD Component 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,[3] ''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 inconsistent with DoD procedures for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. DoD Components 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 responsible DoD payment office generally makes payment within 30 calendar days after receipt of the billing by the office designated to receive the billing, unless the billing is improper (for further information about timeframes for payments, see 32 CFR 22.810(c)(3)(ii)).

(2) Recipients shall be authorized to submit requests 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 grants officer, in consultation with the program manager, has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the award may provide for cash on a working capital advance basis. Under this procedure, the award shall provide for advancing cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the award shall provide for reimbursing the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

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

(h) Unless otherwise required by statute, grants officers shall not withhold payments for proper charges made by recipients at any time during the project period unless:

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

(2) The recipient or subrecipient is delinquent in a debt to the United States under OMB Circular A–129, ''Managing Federal Credit Programs'' (see definitions of ''debt'' and ''delinquent debt,'' at 32 CFR 22.105). Under such conditions, the grants officer 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

[3] See footnote 2 to § 32.12(a).

the Federal Government is liquidated (also see 32 CFR 22.420(b)(2) and 22.820).

(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, DoD Components 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:

(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; or

(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)(1) Interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, PO Box 6021, Rockville, MD 20852.

(2) In keeping with Electronic Funds Transfer rules (31 CFR part 206), interest should be remitted to the HHS Payment Management System through an electronic medium such as the FEDWIR Deposit System. Electronic remittances should be in the format and should include any data that are specified by the grants officer as being necessary to facilitate direct deposit in HHS' account at the Department of the Treasury.

(3) Recipients that do not have electronic remittance capability should use a check.

(4) Interest amounts up to $250 per year may be retained by the recipient for administrative expense.

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

(1) SF–270, Request for Advance or Reimbursement. Each DoD Component shall adopt the SF–270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. DoD Components, however, have the option of using this form for construction programs in lieu of the SF–271,[4] ''Outlay Report and Request for Reimbursement for Construction Programs.''

(2) SF–271, Outlay Report and Request for Reimbursement for Construction Programs. Each DoD Component shall adopt the SF–271 as the standard form to be used for requesting reimbursement for construction programs. However, a DoD Component may substitute the SF–270 when the DoD Component determines that it provides adequate information to meet Federal needs.

§ 32.23 Cost sharing or matching.

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

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

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

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

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except

[4] See footnote 2 to § 32.12(a).

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 DoD Component.

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

(b) Unrecovered indirect costs (see definition in § 32.2) may be included as part of cost sharing or matching.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If a DoD Component 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:

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation; or

(2) The current fair market value. However, when there is sufficient justification, the DoD Component 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. The DoD Component may accept the use of any reasonable basis for determining the fair market value of the property.

(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 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 the purpose of the award is to:

(1) 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; or

(2) 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 DoD Component 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.

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

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

(2) The basis for determining the valuation for personal service and property shall be documented.

§ 32.24 Program income.

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

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

(1) Added to funds committed to the project by the DoD Component 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 a program regulation or award 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 program regulations or the terms and conditions of the award do not specify 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 terms and conditions specify another alternative or the recipient is subject to special award conditions, as indicated in § 32.14.

(e) Unless program 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 program 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 §§ 32.30 through 32.37).

(h) Unless program 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. Note that the Patent and Trademark Amendments (35 U.S.C. chapter 18) apply to inventions made under an experimental, developmental, or research award.

§ 32.25 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 sum of the Federal and non-Federal shares, or only the Federal share, depending upon DoD Component 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 the cognizant grants officer 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 DoD Component. DoD Components should require this prior approval only in exceptional circumstances. The requirement in each such case must be stated in the award document.

(6) The inclusion, unless waived by the DoD Component, of costs that require prior approval in accordance with OMB Circular A–21,[5] ''Cost Principles for Institutions of Higher Education,'' OMB Circular A–122,[6] ''Cost Principles for Non-Profit Organizations,'' or Appendix E to 45 CFR part 74, ''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. However, it should be noted that many of the prior approvals in these cost principles are appropriately waived only after consultation with the cognizant federal agency responsible for negotiating the recipient's indirect costs.

(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.

(9) If required by the DoD Component, the transfer of funds among direct cost categories that is described in paragraph (e) of this section.

(d) (1) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, OMB Circular A–110 authorizes DoD Components, at their option, to waive cost-related and administrative prior written approvals required by this part and OMB Circulars A–21 and A–122 (but see cautionary note at end of paragraph (c)(5) of this section).

(2) The two prior approvals listed in paragraphs (d)(2)(i) and (ii) of this section are automatically waived unless the award document states otherwise. DoD Components should override this automatic waiver and require the prior approvals, especially for research awards, only in exceptional circumstances. Absent an override in the award terms and conditions, recipients need not obtain prior approvals before:

(i) Incurring pre-award costs 90 calendar days prior to award (incurring pre-award costs more than 90 calendar days prior to award would still require the prior approval of the DoD Component). All pre-award costs are incurred at the recipient's risk (i.e., the DoD Component 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).

(ii) Carrying forward unobligated balances to subsequent funding periods.

(3) Under certain conditions, a DoD Component may authorize a recipient to initiate, without prior approval, a one-time, no-cost extension (i.e., an extension in the expiration date of an award that does not require additional Federal funds) for a period of up to twelve months, as long as the no-cost extension does not involve a change in the approved objectives or scope of the project. The conditions for waiving this prior approval requirement are that the DoD Component must:

(i) Judge that the recipient's subsequently initiating a one-time, no-cost extension would not cause the DoD Component to fail to comply with DoD funding policies (for further information on the location of DoD funding policies, grants officers may refer to Appendix C to 32 CFR part 22).

(ii) Require a recipient that wishes to initiate a one-time, no-cost extension to so notify the office that made the award at least 10 calendar days before the original expiration date of the award.

[5] See footnote 1 to § 32.1(a).

[6] See footnote 1 to § 32.1(a).

(e) The DoD Component may, at its option, restrict the transfer of funds among direct cost categories, 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 DoD Component. As a matter of DoD policy, requiring prior approvals for such transfers generally is not appropriate for grants to support research. No DoD Component 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.

(f) For construction awards, recipients shall request prior written approval promptly from grants officers for budget revisions whenever:

(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; or

(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 § 32.27.

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

(h) No other prior approval requirements for specific items may be imposed unless a deviation has been approved, in accordance with the deviation procedures in § 32.4(c).

(i) For both construction and nonconstruction awards, DoD Components shall require recipients to notify the grants officer 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.

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

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

§ 32.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133,[7] ''Audits of States, Local Governments, and Non-Profit Organizations.''

(b) State and local governments that are subrecipients shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(c) Hospitals that are subrecipients and are not covered by the audit provisions of revised OMB Circular A–133 shall be subject to the audit requirements specified in award terms and conditions.

(d) For-profit organizations that are subrecipients shall be subject to the audit requirements specified in 32 CFR 34.16.

§ 32.27 Allowable costs.

(a) *General.* For each kind of recipient or subrecipient of a cost-type assistance award, or each contractor receiving a. cost-type contract under an assistance award, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the

[7] See footnote 1 to § 32.1(a).

cost principles applicable to the entity incurring the costs.

(b) *Governmental organizations.* Allowability of costs incurred by State, local or federally-recognized Indian tribal governments that may be subrecipients or contractors under awards subject to this part is determined in accordance with the provisions of OMB Circular A–87,[8] ''Cost Principles for State and Local Governments.''

(c) *Non-profit organizations.* The allowability of costs incurred by non-profit organizations that may be recipients or subrecipients of awards subject to this part, or contractors under such awards, is determined in accordance with the provisions of OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.''

(d) *Higher educational institutions.* The allowability of costs incurred by institutions of higher education that may be recipients, subrecipients, or contractors is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions.''

(e) *Hospitals.* The allowability of costs incurred by hospitals that are recipients, subrecipients, or contractors is determined in accordance with the provisions of Appendix E to 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.''

(f) *For-profit organizations.* The allowability of costs incurred by subrecipients or contractors that are either for-profit organizations or 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; however, the grants officer or the award terms and conditions may in rare cases authorize a determination of allowable costs that are in accordance with uniform cost accounting standards and comply with cost principles acceptable to the Department of Defense.

§ 32.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the award only allowable costs resulting from obligations incurred during the funding period and any pre-award costs (see § 32.25(d)(2)(i)) authorized by the DoD Component.

[8] See footnote 1 to § 32.1(a).

PROPERTY STANDARDS

§ 32.30 Purpose of property standards.

Sections 32.31 through 32.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government and property whose cost was charged to a project supported by a Federal award. DoD Components 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 §§ 32.31 through 32.37.

§ 32.31 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.

§ 32.32 Real property.

Each DoD Component that makes awards under which real property is acquired in whole or in part with Federal funds shall prescribe requirements for recipients concerning the use and disposition of such property. 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 DoD Component.

(b) The recipient shall obtain written approval by the grants officer 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 DoD Component.

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

§ 32.33 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 DoD Component that made the award. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the DoD Component for further Federal agency utilization.

(2) If the DoD Component that made the award has no further need for the property, it shall be declared excess and either:

(i) Reported to the General Services Administration, in accordance with the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(b)(2)), as implemented by General Services Administration regulations at 41 CFR 101–47.202; or

(ii) Disposed of by alternative methods pursuant to other specific statutory authority. For example, DoD Components are authorized by the Federal Technology Transfer Act (15 U.S.C. 3710(i)), to donate research equipment to educational and non-profit organizations for the conduct of technical and scientific education and research activities—donations under this Act shall be in accordance with the DoD implementation of E.O. 12999 (3 CFR, 1996 Comp., p. 180), ''Educational Technology: Ensuring Opportunity for All Children in the Next Century,'' as applicable. Appropriate instructions shall be issued to the recipient by the DoD Component.

(b) *Exempt property*. (1) When statutory authority exists, a DoD Component may vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the DoD Component considers appropriate. For example, under 31 U.S.C. 6306, DoD Components may so vest title to tangible personal property under a grant or cooperative agreement for basic or applied research in a nonprofit institution of higher education or a nonprofit organization whose primary purpose is conducting scientific research. Such property is ''exempt property.''

(2) As a matter of policy, DoD Components shall make maximum use of the authority of 31 U.S.C. 6306 to vest title to exempt property in institutions of higher education, without further obligation to the Government, to enhance the university infrastructure for future performance of defense research and related, science and engineering education.

(3) DoD Components may establish conditions, in regulation or in award terms and conditions, for vesting title to exempt property. Should a DoD Component not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

§ 32.34 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 DoD Component that made the award. 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) First, activities sponsored by the DoD Component that funded the original project.

(2) Second, activities sponsored by other DoD Components.

(3) Then, activities sponsored by other Federal 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 DoD Component that financed the equipment; second preference shall be given to projects or programs sponsored by other DoD Components; and third preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the DoD Component that financed the property. 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 DoD Component that financed the equipment.

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

(1) Records for equipment and federally-owned property shall be maintained accurately and shall include the following information:

(i) A description of the equipment or federally-owned property.

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

(iii) Source of the equipment or federally-owned property, including the award number.

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

(v) Acquisition date (or date received, if the property 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 property furnished by the Federal Government).

(vii) Location and condition of the equipment or federally-owned property 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 DoD Component that made the award for its share.

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

(3) A physical inventory of equipment and federally-owned property 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 or federally-owned property.

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

(5) Adequate maintenance procedures shall be implemented to keep the equipment or federally-owned property 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.

(1) For equipment with a current per unit fair market value of $5,000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the DoD Component that originally made the award 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.

(2) If the recipient has no need for the equipment, the recipient shall request disposition instructions from the DoD Component. The DoD Component shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern:

(i) The grants officer, in consultation with the program manager, shall judge whether the age and nature of the equipment warrant a screening procedure to determine whether the equipment is useful to a DoD Component or other Federal agency. If a screening procedure is warranted:

(A) The DoD Component shall determine whether the equipment can be used to meet DoD requirements.

(B) If no DoD requirement exists, the availability of the equipment shall be reported to the General Services Administration by the DoD Component to determine whether a requirement for the equipment exists in other Federal agencies.

(ii) 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 DoD Component that made the award 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.

(iii) 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.

(iv) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by the DoD Component that made the award for such costs incurred in its disposition.

(h) The DoD Component 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.

(1) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing. For exempt property, in accordance with § 32.33(b)(3), note that this identification must occur by the time of award, or title to the property vests in the recipient without further obligation to the Government.

(2) The DoD Component shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with award funds and federally-owned property. If the DoD Component fails to issue disposition instructions for equipment within the 120 calendar day period, the recipient shall apply the standards of paragraph (g) of this section.

(3) When the DoD Component exercises its right to take title, the equipment shall be subject to the provisions for federally-owned property.

§ 32.35 Supplies.

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

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

§ 32.36 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. DoD Components 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 Governmentwide 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) The Federal Government has the right to:

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

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

(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the DoD Component that made the award shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the DoD Component that made the award obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of this paragraph (d):

(i) *Research data* is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This ''recorded'' material excludes physical objects (*e.g.*, laboratory samples). *Research data* also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) *Published* is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) *Used by the Federal Government in developing an agency action that has the force and effect of law* is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(e) Title to intangible property and debt instruments acquired under an award or subaward (rather than developed or produced under the 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 DoD Component that made the award. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 32.34(g).

[63 FR 12188, Mar. 12, 1998, as amended at 65 FR 14407, 14416, Mar. 16, 2000]

§ 32.37 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. DoD Components 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

§ 32.40 Purpose of procurement standards.

Sections 32.41 through 32.48 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.

§ 32.41 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 DoD Component that made the award, 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.

§ 32.42 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.

§ 32.43 Competition.

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

§ 32.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide, at a minimum, that:

(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; and

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

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

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

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

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

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

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

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

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

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

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

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large

for one of these firms to handle individually.

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

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

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by the DoD implementation, in 32 CFR part 25, of E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), ''Debarment and Suspension.''

(e) Recipients shall, on request, make available for the DoD Component's preaward review, 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 this part.

(2) The procurement is expected to exceed the simplified acquisition threshold fixed at 41 U.S.C. 403 (11) (currently $100,000) 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 simplified acquisition threshold, specifies a ''brand name'' product.

(4) The proposed award over the simplified acquisition 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 simplified acquisition threshold.

§ 32.45 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.

§ 32.46 Procurement records.

Procurement records and files for purchases in excess of the simplified acquisition threshold shall include the following at a minimum:

(a) Basis for contractor selection;

(b) Justification for lack of competition when competitive bids or offers are not obtained; and

(c) Basis for award cost or price.

§ 32.47 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.

§ 32.48 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 simplified acquisition 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 simplified acquisition threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the DoD Component may accept the bonding policy and requirements of the recipient, provided the grants officer 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 in §§ 32.40 through 32.49, 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 simplified acquisition threshold) awarded by recipients shall include a provision to the effect that the recipient, the Department of Defense, 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 those for amounts less than the simplified acquisition threshold, by recipients and their contractors shall contain the procurement provisions of Appendix A to this part, as applicable.

§ 32.49 Resource Conservation and Recovery Act.

Under the Resource Conservation and Recovery Act (RCRA) (section 6002, Pub. L. 94–580, 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247–254). 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.

REPORTS AND RECORDS

§ 32.50 Purpose of reports and records.

Sections 32.51 through 32.53 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.

§ 32.51 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 § 32.26.

(b) The award terms and conditions 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 award year; quarterly or semi-annual reports shall be due 30 calendar days after the reporting period. DoD Components may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

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

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

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs. However, unit costs are generally inappropriate for research (see § 32.21 (a) and (b)(4)).

(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 grants officer 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) DoD Components' representatives may make site visits, as needed.

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

§ 32.52 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*[9] *or SF–269A*,[10] *Financial Status Report.* (i) DoD Components shall require recipients to use the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs. A DoD Component 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,[11] Report of Federal Cash Transactions, is determined to provide adequate information to meet agency 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 DoD Component shall prescribe whether the report shall be on a cash or accrual basis. If the award requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the

[9] See footnote 2 to § 32.12(a).
[10] See footnote 2 to § 32.12(a).
[11] See footnote 2 to § 32.12(a).

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 DoD Component 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 award.

(iv) The DoD Component shall require recipients to submit the SF–269 or SF–269A (an original and no more than two copies) no later than 30 calendar 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 grants officer upon request of the recipient.

(2) *SF–272, Report of Federal Cash Transactions.* (i) When funds are advanced to recipients the DoD Component shall require each recipient to submit the SF–272 and, when necessary, its continuation sheet, SF–272a.[12] The grants officer shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each award to the recipients.

(ii) DoD Components may require forecasts of Federal cash requirements in the ''Remarks'' section of the report.

(iii) When practical and deemed necessary, DoD Components may require recipients to report in the ''Remarks'' section the amount of cash advances received in excess of three working 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. DoD Components may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

[12] See footnote 2 to § 32.12(a).

(v) DoD Components may waive the requirement for submission of the SF–272 for any one of the following reasons:

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

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

(C) When electronic payment mechanisms or SF–270 forms provide adequate data.

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

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

(2) When a grants officer, after consultation with the Federal agency assigned cognizance for a recipient's audit and audit resolution, determines that the recipient's accounting system does not meet the standards in § 32.21, 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 grants officer, in obtaining this information, shall comply with applicable report clearance requirements of 5 CFR part 1320.

(3) Grants officers are encouraged to shade out any line item on any report if not necessary.

(4) DoD Components are encouraged to accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) DoD Components may provide computer or electronic outputs to recipients when it expedites or contributes to the accuracy of reporting.

§ 32.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access

to records for awards to recipients. DoD Components 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. 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 DoD Component that made the award, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, and related records, for which retention requirements are specified in paragraph (g) of this section.

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

(d) The grants officer shall request that recipients transfer certain records to DoD Component custody when he or she determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a grants officer may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) DoD Components, 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 DoD Component shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the DoD Component 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 DoD Component making the award.

(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 an indirect-cost proposal, plan, or other computation to the Federal agency responsible for negotiating the recipient's indirect cost rate, as the basis for negotiation of the rate, or the subrecipient submits such a proposal, plan, or computation to the recipient, 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 cognizant Federal 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.

(h) If the information described in this section is maintained on a computer, recipients shall retain the computer data on a reliable medium for the time periods prescribed. Recipients may transfer computer data in machine readable form from one reliable

computer medium to another. Recipients' computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. Recipients shall also maintain an audit trail describing the data transfer. For the record retention time periods prescribed in this section, recipients shall not destroy, discard, delete, or write over such computer data.

TERMINATION AND ENFORCEMENT

§ 32.60 Purpose of termination and enforcement.

Sections 32.61 and 32.62 set forth uniform suspension, termination and enforcement procedures.

§ 32.61 Termination.

(a) Awards may be terminated in whole or in part only as follows:

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

(2) By the grants officer 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; or

(3) By the recipient upon sending to the grants officer written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. The recipient must provide such notice at least 30 calendar days prior to the effective date of the termination. However, if the grants officer determines in the case of partial termination that the reduced or modified portion of the award will not accomplish the purposes for which the award was made, he or she may terminate the award in its entirety.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 32.71, 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.

§ 32.62 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 grants officer may, in addition to imposing any of the special conditions outlined in § 32.14, 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 grants officer and DoD Component.

(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 DoD Component 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. Award terms or conditions will incorporate the procedures of 32 CFR 22.815 for processing recipient claims and disputes and for deciding appeals of grants officers' decisions.

(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 grants officer expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if the costs:

(1) 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; and

(2) 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 32 CFR part 25.

Subpart D—After-the-Award Requirements

§ 32.70 Purpose.

Sections 32.71 through 32.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 32.71 Closeout procedures.

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

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

(c) The responsible grants officer and payment office shall expedite completion of steps needed to close out awards and make prompt, final 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 DoD Component has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129[13] governs unreturned amounts that become delinquent debts (see 32 CFR 22.820).

(e) When authorized by the terms and conditions of the award, the grants officer 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 §§ 32.31 through 32.37.

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

§ 32.72 Subsequent adjustments and continuing responsibilities.

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

(1) The right of the Department of Defense 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 § 32.26.

(4) Property management requirements in §§ 32.31 through 32.37.

(5) Records retention as required in § 32.53.

(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 grants officer and the recipient, provided the responsibilities of the recipient referred to in § 32.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 32.73 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.

(b) OMB Circular A–110 informs each Federal agency that:

(1) If a debt is not paid within a reasonable period after the demand for payment, the Federal agency may reduce the debt by:

[13] See footnote 1 to § 32.1(a).

(i) Making administrative offset against other requests for reimbursement.

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

(iii) Taking other action permitted by statute.

(2) 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.''

(c) DoD grants officers shall follow the procedures in 32 CFR 22.820 for issuing demands for payment and transferring debts to DoD payment offices for collection. Recipients will be informed about pertinent procedures and timeframes through the written notices of grants officers' decisions and demands for payment.

APPENDIX A TO PART 32—CONTRACT PROVISIONS

All contracts awarded by a recipient, including those for amounts less than the simplified acquisition threshold, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246 (3 CFR, 1964–1965 Comp., p. 339), ''Equal Employment Opportunity,'' as amended by E.O. 11375 (3 CFR, 1966–1970 Comp., p. 684), ''Amending Executive Order 11246 Relating to Equal Employment Opportunity,'' and as supplemented by regulations at 41 CFR ch. 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 subawards 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 responsible DoD Component.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a–7)*—This Act applies to procurements under awards only when the Federal program legislation specifically makes it apply (i.e., Davis-Bacon does not by itself apply to procurements under awards). In cases where another statute does make the Davis-Bacon Act apply, all construction contracts awarded by the recipients and subrecipients of more than $2,000 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 $100,000 for construction or other purposes 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, Grant or Cooperative Agreement*—Contracts, grants, or cooperative 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.''

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 subawards 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 responsible DoD Component 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)*—Contract awards that exceed the simplified acquisition threshold and certain other contract awards shall not be made to parties listed on the General Services Administration's Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs in accordance with E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), ''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 simplified acquisition threshold shall provide the required certification regarding its exclusion status and that of its principals.

PART 33—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
33.1 Purpose and scope of this part.
33.2 Scope of subpart.
33.3 Definitions.
33.4 Applicability.
33.5 Effect on other issuances.
33.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

33.10 Forms for applying for grants.
33.11 State plans.
33.12 Special grant or subgrant conditions for ''high-risk'' grantees.

Subpart C—Post-Award Requirements

FINANCIAL ADMINISTRATION

33.20 Standards for financial management systems.
33.21 Payment.
33.22 Allowable costs.
33.23 Period of availability of funds.
33.24 Matching or cost sharing.
33.25 Program income.
33.26 Non-Federal audit.

CHANGES, PROPERTY, AND SUBAWARDS

33.30 Changes.
33.31 Real property.
33.32 Equipment.
33.33 Supplies.
33.34 Copyrights.
33.35 Subawards to debarred and suspended parties.
33.36 Procurement.
33.37 Subgrants.

REPORTS, RECORDS RETENTION, AND ENFORCEMENT

33.40 Monitoring and reporting program performance.
33.41 Financial reporting.
33.42 Retention and access requirements for records.
33.43 Enforcement.
33.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

33.50 Closeout.
33.51 Later disallowances and adjustments.
33.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 113.

SOURCE: 53 FR 8070, 8087, Mar. 11, 1988. Redesignated at 57 FR 6200, Feb. 21, 1992.

Subpart A—General

§ 33.1 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards