

weights are also published. The criteria cover at least the following factors (except where the nature of the eligible projects makes one or more of these factors irrelevant):

- (1) How well qualified the project's personnel will be;
- (2) The adequacy of the applicant's facilities and resources;
- (3) The adequacy of the project plan or methodology;
- (4) The cost-effectiveness of the project; and
- (5) How closely the project objectives fit the objectives for which applications were invited.

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

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

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

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

- (1) A copy of, or reference to, the authorizing statutes for the program;
- (2) All guidelines of general applicability for administration of the program;
- (3) A description of the procedures the awarding agency will use for evaluating applications; and
- (4) Any other information that the awarding agency believes will be helpful.

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

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

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

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

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

(i) The recipient organization is responsible for safeguarding the rights and welfare of any human subjects involved in research, development, and related activities supported by this agreement. The recipient organization may conduct research involving human subjects only as described in the proposal and as approved by the recipient organization's cognizant Institutional Review Board. Prior to conducting such research, the recipient organization shall obtain and document a legally sufficient informed consent from

each human subject involved. No such informed consent shall include any exculpatory language through which the subject is made to waive, or to appear to waive, any of his or her legal rights, including any release of the recipient organization or its agents from liability for negligence.

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

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

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

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

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

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

(i) Any air transportation to, from, between, or within a country, other than the U.S., of persons or property,

the expense of which will be assisted by USDA funding, to be performed on a U.S.-flag carrier if service provided by such carrier is "available."

(ii) For the purposes of this requirement:

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

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

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

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

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

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

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

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

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

(6) It will comply with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity

for which the recipient receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

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

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

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

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

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

(12) It will assist the awarding agency in its compliance with Section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. 470, Executive Order 11593, and the Archaeological and Historic Preservation Act of 1974, 16 U.S.C. 496a-1, *et. seq.*, by (i) consulting with the State Historic Preservation Officer

on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR 800.8) by the activity, and notifying the awarding agency of the existence of any such properties, and by (ii) complying with all requirements established by the awarding agency to avoid or mitigate adverse effects upon such properties.

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

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

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

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

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

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

As a condition of this grant or cooperative agreement, the recipient assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive

## § 3015.300

Orders and other generally applicable requirements, including those set out in 7 CFR 3015.205(b), which hereby are incorporated in this agreement by reference, and such other statutory provisions as are specifically set forth herein.

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

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

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

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

#### § 3015.300 Purpose.

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

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

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

#### § 3015.301 Definitions.

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

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

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

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

#### § 3015.302 Applicability.

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

#### § 3015.303 Secretary's general responsibilities.

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

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

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

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

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

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

(5) Where State planning and budgeting systems are sufficient and where